

response at such a crucial time, broke all pledges they had made.

The Determination of Sayyidnā Mūsā عليه السلام against the Treachery of his People

The prayer of Sayyidnā Mūsā عليه السلام: (عَلَيْهِ السَّلَامُ) "O My Lord, I have no control except over myself" should be seen in the perspective of the events in the life of the people of Bani Isrā'il, the favours of Allah bestowed upon them and the conduct of their prophet, Sayyidnā Mūsā عليه السلام in their case. An impartial observer would not fail to notice that the people of Bani Isrā'il had been suffering from all sorts of pain and disgrace as slaves and serfs of the Pharaohs for centuries. It was the teaching of Sayyidnā Mūsā عليه السلام, and his *barakah* by virtue of which Allah Ta'ala blessed them with unprecedented stations. With their own eyes, they saw so many manifestations of the most perfect power of Allah *Jalla Sha'nuhū*. The Pharaoh and the people of Pharaoh were defeated on their own grounds, in the Court confrontation summoned by them at the hands of Sayyidnā Mūsā and Sayyidnā Hārūn, peace be upon both of them. The magicians they had trusted were the magicians who placed their trust in Sayyidnā Mūsā عليه السلام and elected to stay by his side. Then, there was the Pharaoh, the one who claimed to be God, and alongwith him, there were so many members of his family who lived in luxury in the royal palace. And then, their eyes saw how the great subduing power of Allah, the Mighty, the Exalted, made all of them vacate all palaces and mansions they lived in and leave behind all they once owned, all simultaneously, in a single sweep of time. And how He drowned the Pharaoh in the sea with Bani Isrā'il looking on the spectacle and how did He make the miracle of Bani Isrā'il themselves cross the river. And finally, how was the wealth, over which the Pharaoh waxed proud by saying: (أَلَيْسَ لِي مِنْ هَذِهِ الْأَرْضِ مَا يَرَى وَمَنْ فِي الْأَرْضِ أَنْهُو أَكْبَرُ مِنْ مَخْتَنِي) (Is it not that this land of Egypt is for me and these are rivers which flow from beneath me?) given out by Allah Ta'ala, the entire country and the entire wealth, without any fighting or killing, to the Bani Isrā'il !

These were great happenings. These people were direct witnesses to the manifestations of Allah's supreme power to subdue. No less was the good done to them by Sayyidnā Mūsā عليه السلام who first delivered them from heedlessness and ignorance and then freed them from the

slavery of the Pharaoh facing unbearable hardships in that process. After all that, when these very people were commanded to mount a *Jihad* on Syria, of course with assurances of Divine help and promises of rewards, they betrayed their mean nature and said: إذْهَبْ أَنْتَ وَرَبُّكَ فَقَاتِلَا رَبِّيْ (So go, you and your Lord, and fight. As for us, we are sitting right here). Let the greatest possible reformer in the world stop for a while, cross his hand over his heart and think what effect such low attitudes demonstrated by the people he was working for would have produced on him. But, here we are talking about a highly determined *Rasûl* of Allah who stands there as an immovable model of steadfastness, despite all odds, and pursuing his goal relentlessly.

Now that he was made helpless by repeated breaches of trust committed by his people, he turns to his Lord and to Him he says only this much: إِنِّي لَا أَمْلِكُ إِلَّا نَفْسِي وَأَخْيَ (I have no control except over myself and my brother). And the problem was how could he now carry out the *Jihad* expedition against the Amalkites? Also worth noticing is the fact that there were at least two chiefs of the *Bani Isrâ'il*, *Yushâ' ibn Nun* and *Kalib ibn Yu'qinâ*, who had proved themselves to have been faithful followers of Sayyidna *Musa* عليه السلام and had made consistent efforts with him to give good counsel to their people and bring them to the right path. Still at this time, he made no mention of them as well. He simply talked about himself and his brother, Sayyidna *Harûn* عليه السلام. It had no other cause but the same treachery and disobedience of the people of *Bani Isrâ'il*. Sayyidna *Harûn*, عليه السلام, being a prophet was the only one Divinely protected there. That he would stand firm by the truth in word and deed was certain. As for the two chiefs, they were not so protected and infallible. So, being in pain and anger, he mentioned only those he was certain would stand firm on truth - 'I have no control except over myself and my brother.'

كَافُرُنَ: The prayer that Sayyidna *Musa* عليه السلام made after that was: يَبْعَدْنَا وَيَبْعَدْنَاهُ الْقَوْمُ الْفَاسِدُونَ (So, make a separation between us and the sinning people). The substance of this prayer, according to an explanation given by Sayyidna 'Abdullah ibn 'Abbâs, رضي الله عنه, was that 'the punishment these people deserved should be given to them; and whatever we are found to be deserving of should be awarded to us.'

The manner in which Allah Ta'ala answered this prayer was: فَانْهَا

(مَنْهَا مُنْهَمُونَ أَرْبَعِينَ سَنَةً، يَكُنُّ هُنَّ فِي الْأَرْضِ) (This [land] is prohibited to them for forty years. They shall be wandering around the earth). It means that the land of Syria was forbidden for them for forty years. They shall not go there, even if they wanted to. And not simply that they would be unable to go to the land of Syria, they would also be unable to return back to their homeland of Egypt, if they thought of going there. Instead of that, they shall be detained in this wilderness.

For punishments that come from Allah Almighty who needs the police and their handcuffs or the high and strong walls and iron-gates of prisons? When He intends to detain anyone, He needs none of these formal arrangements. He can put one under arrest even on grounds open from all sides. The reason is obvious. The whole universe is at His command. It was created by Him and from Him it takes its orders. When the universe is served with Divine orders to put someone under arrest, the air and the atmosphere and the earth and the space become the jailor for the condemned.

So, this open land area located between Egypt and Baytul-Maqdis is comparatively small. Its measurement, according to the *Tafsīr* of Sayyidnā Muqātil Ḥasan, is thirty *Farsakh* in length and nine *Farsakh* in width. If one *Farsakh* is taken to be equal to three miles, it comes to be a total area of ninety miles in length and twenty seven miles in width. And according to some narrations, the whole area is thirty by eighteen miles. Thus, Allah Ta‘āla detained a whole people whose total number, according to the statement of Sayyidnā Muqātil Ḥasan, was six hundred thousand, restricting them within this small open ground in a manner that they kept struggling for full forty years to somehow get out of this open land area and return back to Egypt, or go forward and reach Baytul-Maqdis. But, what actually happened was that by the time came evening after a whole day's journey, they discovered that they have been as if moving in a circle having returned to the same spot from where they had started in the morning.

Authentic scholars of *Tafsīr* say that the punishment Allah *Jalla Sha’nuhū* gives to a people is in proportion to their evil deed. Since these disobedient people had uttered the words: إِنَّ هُنَّا فَعُولَةٌ (we are sitting right here), Allah Ta‘āla had them detained right there for forty years in punishment. Historical accounts in this matter differ. Some

say that during these forty years, the present generation which had disobeyed was totally destroyed. Their next generation survived and it was this generation which, after having been delivered from this forty-year detention, entered Baytul-Maqdis; or, there were some people from the earlier generation who were still surviving. However, there was that promise of the Holy Qur'ān: كَتَبَ اللَّهُ لَكُمْ (that is, Allah has destined the Holy Land of Syria for the Bani Isrā'il). That promise had to be fulfilled, that the Bani Isrā'il should take it over and rule the land. But, the people of Bani Isrā'il present during that time elected to ignore this Divine award for which they were duly punished: مُحَرَّمٌ عَلَيْهِمْ أَرْبَعِينَ سَنَةً that is, they were deprived of victory over the Holy Land for forty years. Then, it was at the hands of their next generation, that this country was conquered, and the promise of Allah Ta'ālā stood fulfilled.

In this wilderness of Tih, Sayyidnā Mūsā and Hārūn عليهما السلام were with their people for whom this wilderness was nothing but detention and punishment, while, for these two blessed souls, it was the fountain head of Divine blessings. This is why this period of forty years during which the Bani Isrā'il were condemned was still full of many silver linings. Such was the *barakah* of the presence of Sayyidnā Mūsā and Hārūn عليهما السلام among them, that Allah Ta'ālā showered on them blessings of many kinds. When they became helpless against the scorching sun over their heads in an open field, Allah Ta'ālā, answering the prayer of Sayyidnā Mūsā عليه السلام, stretched out a canopy of clouds over their heads. Wherever they went, these clouds would follow them with their shade. When they complained of thirst and the shortage of water, Allah Ta'ālā gave Sayyidnā Mūsā عليه السلام a special stone which went with him wherever he went, and when they needed water, Sayyidnā Mūsā عليه السلام would strike it with his staff and twelve streams would gush forth from it. When they were hit by hunger, the heavenly food of *Mann* and *Salva* was sent to them. And when they complained about the darkness during nights, Allah Ta'ālā provided for them a tower of light under the light of which they did what they had to do.

To sum up, this wilderness of Tih was not full of condemned people only. In fact, there were two dear prophets of Allah Ta'ālā and with them two favoured elders, Yūshā' ibn Nūn and Kalīb ibn Yu'qinā, as

well. It was for their sake that, even during this period of detention and punishment, blessings kept coming to them. And since Allah Ta'āla is the Most Merciful of all those merciful, it is possible that these once disobedient people from the Bani Isrā'il, after having witnessed the happenings around them, may have repented from their sins and may be it was in return for their act of repentance that they were being blessed with these rewards.

According to authentic narrations, it was during this period of forty years 'that Sayyidna Ḥarūn عليه السلام died. Then, after a year or six month, came the death of Sayyidna Mūsa عليه السلام. After them, Allah Ta'āla appointed the revered elder, Yushā' ibn Nun as a prophet and gave him the mission of guiding the Bani Isrā'il. When the period of forty years of detention was over, the remaining people of Bani Isrā'il got together under the leadership of Sayyidna Yushā' ibn Nun and marched towards Baytul-Maqdis on this mission of *Jihād*. True to the promise of Allah Ta'āla, they conquered Syria and the wealth of the land they inherited was unimaginable.

That it has been said: فَلَا تَنْهَى عَنِ الْفُطُومِ الْفَسِيقِينَ (so do not grieve for the sinning people) at the end of verse 26 has a basis, for the blessed prophets, may peace be upon them all, are endowed with a natural disposition which makes it impossible for them to bear by the pain and hardship of their people. Even if they are punished, the prophets too are affected emotionally. Therefore, Sayyidna Mūsa عليه السلام has been comforted here that he should not grieve over the punishment given to those people.

Verses 27 - 32

وَاتْلُ عَلَيْهِمْ نَبَأَ ابْنَى آدَمَ بِالْحَقِّ إِذْ قَرَأَنَا قُرْبَانًا فَتُقْبَلَ مِنْ
آحِدِهِمَا وَلَمْ يُتَقْبَلْ مِنَ الْأُخْرَ طَقَالَ لَا قُتْلَنَكَ طَقَالَ إِنَّا يَتَقْبَلُ
اللَّهُ مِنَ الْمُتَقْبِلِينَ «٢٧» لَئِنْ بَسَطْتَ إِلَيَّ يَدَكَ لِتَقْتُلَنِي مَا أَنَا
بِبَاسِطٍ يَدِيَ إِلَيْكَ لَا قُتْلَكَ إِنِّي أَخَافُ اللَّهَ رَبَّ الْعَالَمِينَ
«٢٨» إِنِّي أُرِيدُ أَنْ تَبُوا بِإِثْمِي وَإِثْمِكَ فَتَكُونُ مِنْ أَصْحَابِ

النَّارِ وَ ذَلِكَ جَزُؤُ الظَّلَمِينَ ﴿٢٩﴾ فَطَوَعَتْ كَهْ نَفْسُهُ قَتْلًا
أَخِيهِ فَقَتَلَهُ فَاصْبَحَ مِنَ الْخَسِيرِينَ ﴿٣٠﴾ فَبَعَثَ اللَّهُ غَرَابًا
يَبْحَثُ فِي الْأَرْضِ لِعِرْيَةٍ كَيْفَ يُوَارِي سَوْءَةَ أَخِيهِ طَقَال
يَوْمَلَشَى أَعْجَزْتُ أَنْ أَكُونَ مِثْلَ هَذَا الْغَرَابِ فَأُوَارِي سَوْءَةَ
أَخِيٍّ فَاصْبَحَ مِنَ النَّذِيْمِينَ ﴿٣١﴾ مِنْ أَجْلِ ذَلِكَ ثَكَبْنَا عَلَى
بَنِيَّ إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي
الْأَرْضِ فَكَانَمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَانَمَا أَحْيَا
النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا
مِنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمْسُرِّفُونَ ﴿٣٢﴾

And recite to them the story of the two sons of Ādām truthfully. When they both offered a sacrifice, then it was accepted from one of them and was not accepted from the other. He said, "I will kill you." He said, "Allah accepts only from the God-fearing. [27] If you stretch your hand towards me to kill me, I am not going to stretch my hand towards you to kill you. Of course, I fear Allah, the Lord of the worlds. [28] I would rather have you earn my sin and your sin and then become one of the people of the Fire. And that is the punishment of the unjust." [29]

His self, however, prompted him to kill his brother, so he killed him and became one of the losers. [30] Then, Allah sent a crow who was scratching the earth to show him how he should hide the corpse of his brother. He said, "Alas! Was I not even able to be like this crow so that I could hide the corpse of my brother? So, he stood regretful. [31]

For this reason, We prescribed for the children of Isrâ'il that whoever kills a person not (to retaliate) for a person killed nor (to punish) for spreading disorder in the earth, is as if he has killed the whole mankind, and whoever saves the life of a person is as if he has saved the life of the whole mankind. And certainly, Our mes-

sengers have come to them with clear signs. Then, after all that, many of them are there to commit excesses on the earth. [32]

Commentary

The Story of Hābil (Abel) and Qābil (Cain)

In these verses, Allah Ta'ālā has instructed the Holy Prophet ﷺ that he should relate the story of the two sons of Ādam truthfully to the people of the Book, or to the whole *Ummah*.

People who are blessed with insight into the Holy Qur'ān know that it is no book of folklore, fiction or history where the purpose is to relate an event from the beginning to the end. But, events of the past and accounts of earlier peoples carry many lessons and wise counsels within their fold. That is the real essence of history. Then, in them, there are such conditions and circumstances as form the basis of different religious injunctions. In view of these very beneficial considerations, the Qur'ān employs a methodology of its own throughout the text. It would, when the occasion warrants, narrate an event. Most often, it would not narrate the whole event in one sequence and at one place. In fact, preference is given to narrating a particular segment from it which bears some element of purpose and is relevant at the given place.

This story of the two sons of Ādam عليهما السلام is being narrated here in the same style. It has many lessons and good counsels for the present and future generations; and under them, mention has been made of many religious injunctions.

We shall proceed by explaining the words used in the text of the Qur'ān following which you will have an idea of the main story, and after that we shall be talking about injunctions and rulings contained therein.

In the previous verses, mentioned there was the command of *Jihād* given to the Bani Isrā'il and how cowardly and evasive they turned out to be in response. Set in contrast, the present story condemns unjust killing and the destruction it brings in its wake. The purpose is to bring the people to adhere to moderation and balance in this matter, for the way it is an error to cringe and back out from fighting and kill-

ing to uphold the truth and put an end to falsehood, similarly, starting to kill and fight unjustly amounts to a stock destruction of one's material and spiritual life both in the present world and in the Hereafter.

As for the expression: إِبْنَ آدَمَ (ibn-iyyā Ādama : the two sons of Ādam) appearing in the first verse (27), it can be said that, for that matter, every human being, man and woman, is from the progeny of Ādam and everyone can be identified as being from among the children of Ādam. But, according to the judgement of the majority of authentic scholars of Tafsīr, the expression: إِبْنَ آدَمَ at this place means the two real sons of Sayyidnā Ādam عليه السلام, that is, Hābil and Qābil. It was to relate their story that it was said: وَأَنْذُلْ عَلَيْهِمْ كِتَابًا إِنْ شَاءَ آدَمَ بِالْحَقِّ (and recite to them the story of the two sons of Ādam truthfully).

While Reporting Historical Accounts, Caution and Truth are Mandatory

Here, by adding the word: بِالْحَقِّ (bil-haqq : truthfully), stress has been placed on an important principle to be observed while reporting historical narratives. Great caution is mandatory in this matter. These narratives should have nothing false in them, nothing contrary to the truth, nothing dubious or deceptive, nor should there be any change, increase or decrease, of any kind, in the narration of the original event. (Ibn Kathīr)

This is not the only place where the Holy Qur'ān has identified this principle. There are other places too where similar instructions appear that it be observed. In Surah 'Al 'Imrān, it was said: إِنَّهُ مَذَّا لَهُ الرَّجُلُ الْحَقُّ (This is indeed the true narration - 3:62). In Surah Al-Kahf, it was said: نَحْنُ نَعْصُ عَلَيْكُمْ بِكَلَمٍ بِالْحَقِّ (We narrate to you their story with truth - 18:13). And in Surah Maryam, it was said: ذَلِكَ عِيسَى ابْنُ مَرْيَمَ قَوْلُ الْحَقِّ (That was 'Isā son of Maryam - a Word of Truth ... -19:34). At all these places, by including the key word of *Al-Haqq* or The Truth with historical narrations, the importance of observing truth in reporting events has been made mandatory. The large number of disorders in this world generated through reporting of events usually issue forth from lack of caution in handling it as it should be handled. A little change of word or mode could distort the reality of the event. The religious codes and laws of past communities were lost through this trap door of negligence and lack of caution leaving their religious books to become collections of stories devoid of

reliable authority. So, by adding a single word: **بِالْحَقِّ** (truthfully) at this place in the verse, a clear signal was given towards this important objective.

In addition to what has been said above, through this very word, the addressees of the Holy Qur'an are also being chastened and guided to the fact that their noble prophet, on him be the peace and blessing of Allah, who is a total *Ummiyy* (untaught by any human being), yet he is describing the events which took place thousands of years ago, absolutely true and correct. When so, how else could it be explained but that it was Divinely revealed to a Divinely ordained prophet?

After this introduction, the event relating to these two sons of Adam عليه السلام was put in the following words by the Holy Qur'an: **أَتُرَى** مُرْيَانَ فَقُتُلَ مِنْ أَخْرِهِمَا وَلَمْ يُتَقْبَلْ مِنَ الْآخِرِ that is, both of them offered their sacrifices for Allah Ta'ala, but it was accepted from one of them and was not accepted from the other.

The word: **Qurbān** (قربان), in terms of Arabic lexical usage, refers to whatever is made the medium of nearness to someone; and in Islamic legal terminology, it means the *Dhabīhah* or sacrifice which is offered to seek nearness to Allah Ta'ala.

The event of offering this sacrifice which has been reported on the basis of sound and strong chains of authorities and which has been declared by Commentator Ibn Kathir as the unanimously agreed upon position of all earlier and later 'Ulama is given below.

When Sayyidnā Adam and Hawwa' عليهما السلام came to live in the world and started having children, it so happened that they had twins from every pregnancy, one of the two being a boy, while the other, a girl. That was a time when, among the children of Adam عليه السلام, there was no one other than brothers and sisters - and brothers and sisters cannot be married to one another. So, Allah Jalla Sha'nuhū, in terms of the need of the time, had promulgated a special provision in the religious law given to Sayyidnā Adam عليه السلام that, as for a boy and girl born out of one pregnancy, they shall be regarded as real brothers and sisters among themselves and marriage between them shall be considered forbidden. But, for a boy born in the second pregnancy, a girl born in the first one shall not be legally taken as a real sister and marriage between them would be permissible.

But, what happened was that the girl born with the first boy, Qābil, was beautiful while the girl born with the second boy, Hābil, was ugly. When came the time of marriage, the ugly girl born with Hābil fell to the lot of Qābil according to rules. This enraged Qābil. He turned hostile to Hābil and started insisting that the girl born with him should be the one given in marriage to him. Sayyidna Ādam عليه السلام, in view of the legal rule of procedure, did not accept the demand. However, to remove the division between Hābil and Qābil, he proposed that they should both offer their respective sacrifice for Allah. Whoever has his sacrifice accepted will be the one to have that girl. The reason is that Sayyidna Ādam عليه السلام was certain that the sacrifice to be accepted will be the sacrifice of the one who has the right to marry her, that is, the sacrifice of Hābil.

In those days, an open sign of a sacrifice being accepted was that a fire would come from the sky and eat up the sacrifice; and the sacrifice which was not eaten up by the fire was the sign of its remaining unacceptable.

Now, the situation was that Hābil was the owner of a flock of sheep and goats. He offered the sacrifice of a good spring lamb. Qābil was a farmer. He offered some grains as his sacrifice. As customary with them, a fire did come from the sky and ate up the sacrifice offered by Hābil - and the sacrifice offered by Qābil remained lying where it was, untouched. Thereupon, hit by failure and disgrace, Qābil was further enraged. Unable to restrain it, he told his brother openly: لَأَقْتُلَكَ (I will kill you).

Hābil did not respond to his angry remark with counter anger on the spot. He rather said something which was peaceful and principled. It even had an element of sympathetic concern for him: إِنَّ اللَّهَ يَعْبُدُ اللَّهُ مَنْ يُتَّقِّيْنَ (Allah accepts only from the God-fearing) that is, if you had been God-fearing, practicing *Taqwā* and piety, your sacrifice too would have been accepted. Since you did not do so, the sacrifice was not accepted. Why blame me for it?

Also mentioned within this statement is the cure for the envy (*hasad*) of the envier (*hāsid*), that is, when the envier sees that Allah Ta'āla has given someone a particular blessing which has not been given to him, then, he should take his deprivation as a result of his own

practical shortcomings and sins and think of repenting from them and correcting his or her behaviour - not that one starts wishing and worrying about ways through which the other person could be made to lose the blessing he has - because this would not bring him any gain, in fact, it will become the cause of some loss to him, for acceptability with Allah depends on *Taqwā* (fear of Allah). (Mazhari)

Acceptability of Deeds Depends on *Ikhlas* (Sincerity) and *Taqwā* (Fear of Allah)

There appears in this dialogue between Hābil and Qābil a sentence which has the status of an important principle: The acceptability of one's deeds and acts of worship depends on *Taqwā*. The deed of a person who has no *Taqwā* in him is not accepted. For this reason, the learned among the righteous elders (*salaf*) have said that this verse is a shot in the arms of those who are devoted to acts of worship and do deeds in the hope of finding the pleasure of Allah. And this was the reason why Sayyidnā 'Amir ibn 'Abdullāh was crying at the time of his death. People around him asked: 'As for you, you have been busy doing your *'Ibādāt* (acts of worship) and good deeds throughout your life, why, then, would you weep?' He said, 'You are saying this and ringing in my ears is this saying of Allah Ta'āla: ﴿إِنَّ اللَّهَ يَعْلَمُ مَا تَصْنَعُونَ﴾ (Allah accepts only from the God-fearing). I just do not know if any *'Ibādah* of mine will be accepted, or not.'

Sayyidnā 'Abdullāh ibn Mas'ud رضي الله عنه said: 'If I become certain that Allah Ta'āla has accepted some deed of mine, then, I would not surrender this blessing even if the whole world were to turn into solid gold and pass into my possession, in fact, I would take it to be nothing as compared to that blessing.'

Similarly, said Sayyidnā Abū Ad-Darda رضي الله عنه: 'If it stands settled that one *Salāh* of mine has found acceptance with Allah Ta'āla, then, that is far more than a whole world-full of blessings for me.'

Sayyidnā 'Umar ibn 'Abd al-'Azīz, may Allah be pleased with him, gave the following good counsel to a person in a letter he wrote to him.

"I tell you to hold on to *Taqwā* without which no deed is accepted; and mercy is not shown to anyone except those who observe *Taqwā*; and without it there is no Divine reward on anything. There are many who preach it but there are very few who practice it."

And Sayyidna 'Alī al-Murtadā رضي الله عنه said: 'Even the smallest deed done with Taqwā is not small. And how a deed which has been accepted can be called small? (Ibn Kathir)

Verses 33 - 34

إِنَّمَا جَزَءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ
فَسَادًا أَنْ يُقْتَلُوا أَوْ يُصَلَّبُوا أَوْ تُقْطَعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ
خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خَرْقٌ فِي الدُّنْيَا وَلَهُمْ
فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ﴿٣٣﴾ إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ
تَقْدِرُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ رَّحِيمٌ ﴿٣٤﴾

Those who fight against Allah and His Messenger and run about trying to spread disorder in the earth, their punishment is nothing but that they shall be killed off or be crucified or their hands and legs be cut apart from different sides or they be kept away from the land (they live in). That is a humiliation for them in this world, and for them in the Hereafter there is a great punishment; [33] except those who repent before you overpower them. Then, be sure that Allah is Most-Forgiving, Very-Merciful. [34]

Commentary

Qur'anic Laws are Unique and Revolutionary

Mentioned in the previous verses (27-32) was the event of the killing of Hābil (Abel) and its gravity as a crime. In the verses cited above, and in verses which follow, there is a description of the legal punishments for killing, plundering, robbery and theft. Prompted in between the description of the punishments for robbery and theft is the need to fear Allah and the desirability of seeking nearness to Him through acts of obedience. This approach of the Qur'an, acting in a very subtle manner, prepares the human mind to accept the desired revolutionary change in thinking. The reason is that the Holy Qur'an, unlike the penal codes of the world, does not stop at a simple codification of crime and punishment. Instead of doing that, it combines with each crime and its punishment the ultimate fear of Allah and the Hereafter making the later almost present before him whereby it would turn the human orientation towards a state of being the very thought of which

leaves a person all cleansed from every defect and sin. An impartial view of things as they are around us will prove that, without the motivating factors of the fear of Allah and the apprehension of the Hereafter, no law or police or army of this world can guarantee that crimes can be eradicated from human societies. It is this wise and affectionate approach of the Holy Qur'an which ushered a revolution in the world when it created a society of human beings who, in their Godliness, were ahead of even angels.

The Three Kinds of Islamic Legal Punishments

Before we proceed with the details of the Islamic legal punishments for robbery and theft mentioned in the verses cited above and present our explanations of the particular verses, it seems appropriate to clarify the Islamic legal terminology concerning these punishments - a lack of familiarity with which causes even educated people to fall in doubts. Under all common laws of the world, punishments for crimes are considered penalties in an absolute sense, irrespective of the crime concerned. Law books like the Indian Penal Code, Pakistan Penal Code and some others in other countries are comprised of all sorts of crimes and their punishments. But, in the Shari'ah of Islam, things work differently. Here, the punishments of crimes have been divided into three kinds. These are: Hudūd (Islamic legal punishment delimited as Divine Statute; plural of Hadd), Qiṣāṣ (Even Retaliation) and Ta'zirat (Penalties; plural of Ta'zir). Before we move on to define these three kinds and explain their sense, it will be useful to bear two things in mind.

Firstly, it is necessary to know that crimes which bring harm or loss to a human being inflict injustice not only on the created but also cause disobedience to the Creator. Therefore, in every crime of this nature, the Right of Allah (*Haqqullāh*) and the Right of the Servant of Allah (*Haqqul-'Abd*) are intermingled, and one becomes guilty of both crimes. But, in some crimes, the status of the Right of the Servant of Allah is more important while, in some others, the status of the Right of Allah is more prominent. As for the modus operandi in religious injunctions, it rests on this status of predominance.

Secondly, it is also necessary to know that the Shari'ah of Islam has not determined any yardstick for crimes other than those which

are special. Instead, it has left it to the discretion of the Qādī (the Judge of an Islamic Court) who could award and enforce the kind and amount of punishment deemed necessary to plug out the incidence of crime keeping in view the objective conditions prevailing in whatever time, place and circumstance it may be. It is also possible that the Islamic state of any time and any place māy, with due consideration of Islamic legal percepts, restrict the rights of the Qādīs in some manner and make them abide by a particular measure of punishment for crimes - as has been the practice in the later centuries of Islam, and as it nearly is the prevailing practice in most countries.

Let us now understand that crimes for which the Qur'ān and Sunnah have not fixed any punishment, instead, have left it to the discretion of the relevant authorities, are the kind of punishments which are called "Ta'zirāt" (penalties) in the terminology of the Sharī'ah of Islam. As for the punishments of crimes already fixed by the Qur'ān and Sunnah, they are divided over two kinds. Firstly, those in which the Right of Allah has been declared to be predominant and the punishment for which is known as "Hadd," the plural of which is "Hudūd." Secondly, those in which the Right of the Servant of Allah has been accepted as predominant in accordance with the Sharī'ah of Islam and the punishment for which is called the "Qisāṣ" (Even Retaliation). As for the description of Hudūd and Qisāṣ, the Holy Qur'ān has itself explained it in full details. The details of the remaining penal offences have been left to the judgement of the Holy Prophet ﷺ and to the discretion of the relevant ruling authority of the time.

In short, we can say that the punishment of crimes which the Holy Qur'ān has promulgated after having determined it to be the Right of Allah is called the "Hudūd," and that which it has ordained as the Right of the Servant of Allah is known as "Qisāṣ," and crimes the punishment of which has not been determined by it are called, "Ta'zir." The injunctions of these three kinds differ in many respects. Those who take the punishment of every crime as "Ta'zir" on the basis of their own customary usage - and do not keep the difference of Islamic legal terminology in sight - make frequent errors of judgement in understanding Islamic legal injunctions.

As for the punishment of penal offences (Ta'zir), they can be made

the lightest, the heaviest, or could even be pardoned, all depending on attending circumstances. Here, the powers and options of the relevant authorities are wide. But, when it comes to Hudūd, no Amir or government or ruler or head of state is permitted to make the least change, alteration, reduction or increase in it. Neither does a change in time and place affect it in any manner nor does the Amir or chief executive of the government have the right to waive or pardon it.

There are only five "Hudūd" in the Shari'ah of Islam. These are the punishments for (1) Robbery, (2) Theft, (3) Adultery, (4) False Accusation of Adultery. These punishments have been mentioned in the Holy Qur'an clearly and categorically (*Mansūs*). The fifth Hadd is that of drinking wine which stands proved on the basis of a consensus (*Ijmā'*) of the noble Companions of the Holy Prophet ﷺ. Thus, the punishments of a total of five crimes stand fixed here. These are called the "Hudūd." The way no Amir or ruler can reduce or pardon these punishments, very similarly, even an act of repentance cannot bring about an amnesty for the criminal as far as the punishment due in this mortal world is concerned. Of course, the sin bound to bring punishment in the Hereafter does get to be forgiven through sincere repentance leaving at least that account in the clear. Out of these, there is only one punishment, that of robbery, in which there is an exception, that is, if the robber repents before being arrested and his conduct in dealings proves his repentance to be satisfactory, only then, this "Hadd" will stand dropped. Repentance after arrest is not valid with regard to the worldly punishment. Other than this, the remaining Hudūd do not get to be forgiven in this world even by repentance - whether this repentance comes before the arrest or after it. In matters relating to penal offences (Ta'zirat) recommendations could be heard as warranted by a relevant right. In the Hudūd of Allah (punishment under Divine right) even the making of a recommendation is not permissible, and equally impermissible is its hearing too. The Holy Prophet ﷺ has prohibited it strictly. The punishments under Hudūd are generally strict. The law of their enforcement is also strict as nobody has been permitted to make any additions or subtractions in them under any circumstances, nor can they be waived or forgiven by anyone. Along with this strict stance maintained in punishment and law, when it comes to some moderation of matters, equally stringent conditions have been imposed

regarding the completion of the crime as well as the completion of the proof of the crime. Should even a single condition out of these be found missing, the Hadd stands dropped. In fact, even the least doubt found in the proof will cause the Hadd to be dropped. In this matter, the established law of Islam is: *الْحُدُودُ شَرِيكٌ بِالشَّهَادَاتِ* that is, Hudūd are dropped in case of doubt.

At this point, let us also understand that in cases where the Islamic legal punishment (Hadd) is dropped because of a doubt or absence of some condition, it is not necessary that the criminal would go scot-free only to become more daring in later crimes. Instead of that, the relevant ruler would award the penal punishment to him as due in his case. The penal punishments (Ta'zirat) of the Shari'ah are generally physical which, being lesson-oriented, have a complete system of blocking and eradicating crimes. Suppose, only three witnesses were found to attest to the proof of adultery (Zinā), and the witnesses are upright and trustworthy about whom the doubt that they would lie cannot be entertained. But, according to the Islamic legal norm, the Islamic legal punishment will not be enforced against the offender because of the absence of the fourth witness. However, it does not mean that the offender will be allowed to walk out free of any obligation, lesson or penalty. The ruler of the time would, rather, award an appropriate penal punishment to him which would be in the form of lashes. Or, take the example of the punishment for theft. If there remains any shortfall or doubt in conditions fixed as the required proof of theft, the Islamic legal Hadd punishment of cutting hands cannot be enforced on the accused. This does not mean that the accused goes all untouched and free. On the contrary, other penal punishments will be given to him as warranted in his case.

The Punishment of Qiṣāṣ (Even Retaliation)

Like Hudūd, the punishment of Qiṣāṣ has also been fixed in the Qur'an, that is, life be taken for life and wounds be retaliated by even wounds. But, the difference is that Hudūd have been enforced as the Right of Allah (*Huqūqullāh*). It means that should the holder of the right elect to forgive the offence, it will not be forgiven, and the Hadd will not be dropped. For example, should the person whose property has been stolen were to forgive the thief, the Islamic prescribed pun-

ishment for theft will not stand forgiven on that count. This is contrary to the case of *Qiṣāṣ* where the Qur'ān and Sunnah have declared the status of the Right of the Servant of Allah (*Haqqul-'Abd*) as predominant. This is why the accused killer, after the crime of killing has been proved legally, is handed over to the guardian (*Wali*) of the person killed who can, at his discretion, take *Qiṣāṣ* and have him killed, or forgive him, if he so wishes. Similar to this is the case of *Qiṣāṣ* in cases of wounds.

You already know that *Hudūd* and *Qiṣāṣ* when dropped do not let the criminal go unscathed, the ruler of the time having the power and discretion to award the amount and kind of penal punishment (*Ta'zīr*) considered appropriate. Therefore, it should not be doubted that, in the event the criminal charged with homicide were to be set free after having been forgiven by the guardian of the person killed, killers would be encouraged and cases of homicide would become common. This doubt is unfounded because taking the life of the person who had killed was the right of the guardian of the person who was killed - and he surrendered it by forgiving. But, providing the security of life for other people is the right of the government. It can, to protect this right, sentence the killer for life or give him some other punishments in order to offset the danger posed by such a person to the lives of other people.

The Explanation of Āyāt and Details of Hudūd

Upto this point, we have dealt with necessary information about the terminology of Islamic Legal Punishments of *Hudūd*, *Qiṣāṣ* and *Ta'zīrat*. We can now move to the explanation of verses which carry injunctions about them and which would also include a detailed discussion of *Hudūd*. The first verse (33) begins by stating the punishment of those who fight against Allah and His Messenger and go about spreading disorder in the earth. For the sake of clarity, let us consider two things at this stage.

1. What does 'fighting' (*Muḥārabah*) against Allah and His Messenger and spreading disorder in the earth mean, and to whom does this apply? The word, *Muḥārabah* is derived from *Harb* and intrinsically means to wrest or snatch away. In Arabic usage, it is used against *Salm* which means peace and security. Thus, we can see that, the

sense of Harb (fight) is the spreading of disorder. It is obvious that rare incidents of theft or killing and plundering do not cause public peace to be disturbed. In fact, this happens only when a powerful and organized group stands up to carry out acts of robbery, killing and plundering. Therefore, according to Muslim jurists, the punishment contemplated in this verse is meant for a group or an individual who robs people and breaks the law of the land by the force of arms. This will not include those who indulge in common individual crimes such as thieves and pick-pockets. (*Tafsīr Mażhari*)

2. The second point worth noticing in this verse is that 'Muharabah' (fighting) of the criminals is said to be against Allah and His Messenger, though the confrontation or fighting waged by robbers and rebels is apparently against human beings. The reason is that a powerful group when it elects to break the Law given by Allah and His blessed Messenger with force, it is really at war with the government, even though they are obviously carrying out their aggression against common human beings. But, when the government itself is Islamic, a government which subscribes to and enforces the Law of Allah and His Messenger, this act of 'fighting' (*Muḥārabah*) will invariably be regarded as being 'against' Allah and His Messenger.

In short, the punishment mentioned in the first verse (33) applies to robbers and rebels who ruin public peace by attacking with armed group force and break the law of the land openly. As obvious, this could appear in many forms. So, everything from aggression against property and honour to killing and bloodshed is included within its sense. It is from here that we find out the difference between *Muqātalah* and *Muḥārabah*. *Muqātalah* refers to a bloody fight, though with actual killing or without, and though property is also looted as an adjunct. The word, *Muḥārabah* is used in the sense of spreading disorder by employing force and causing the destruction of public peace and safety. Therefore, this word is particularly used to denote high-handed and group-led intrusion into anything relating to the life, property and honour of people which is called highway looting, robbery and rebellion.

The punishment for this crime has been fixed by the Holy Qur'an itself when it enforced it as the Right of Allah which, in a manner of

*saying, was a crime against the ultimate authority. In the terminology of the Shari'ah, it is called the Hadd. Let us now find out the Islamic prescribed punishment for dacoity and highway robbery. In the present verse (33), four punishments for highway robbery have been mentioned: أَنْ يُتَّلَقُوا أَوْ مُصَلَّبُوا أَوْ نُقْطَعَ أَيْرِبُونُهُمْ وَأَزْجَلُهُمْ وَمِنْ خَلَافٍ أَوْ يُنْقَوَى مِنَ الْأَرْضِ : That they shall be killed off or be crucified or their hands and legs be cut apart from different sides or they be kept away from the land (they live in).

In the first three punishments, the words used belong to a particular form of verb called "Bāb al-Tafīl" which are emphatic and denote repetition and intensity of the respective acts. The added use of the plural form gives the hint that their being killed or crucified or amputated is not like common punishments where punishment is given only to one individual who has provenly committed a crime. The situation here is rather different when the whole group of robbers will be awarded the punishment by being killed or crucified or amputated, even though the actual crime was committed only by one single individual of the group. Another hint given here indicates that this killing, crucifixion and amputation is not in the form of Qiṣāṣ which could stand pardoned after having been forgiven by the guardians of the person killed. Instead, this Islamic Legal Punishment (Hadd) has been enforced as the Right of Allah (Haqqullāh) and the punishment will not be pardoned legally even if the people who have suffered were to forego and forgive. These two rulings were arrived at by the text's choice of the particular grammatical form (*Bābut-Tafīl*) of the first three words of the verse. (Tafsīr Mazhārī and others)

These four punishments for highway robbery have been introduced by using the word: ، 'Aw,' which is also employed to give choice in a few things and for a division in allotment of jobs too. Therefore, a group of Ṣāḥabah, Tābi'īn and jurists of the Muslim Ummah, by taking the word, 'Aw,' in the sense of choice, has taken the position that the Imām or Amīr or the ruler has been legally given the choice to award all four punishments, or any one of them as suitable in their cases, of course, after an assessment of the power and terror of the robbers and the gravity or negligibility of their crimes. This is the view held by Sayyidnā Sa'īd ibn al-Musaiyyib, Sayyidnā 'Atā', Dāwūd, Ḥasan al-Basrī, Dāḥḥāk, Nakh'iī and Mujāhid as well as that of Imām Mālik

from among the Four Imāms. On the other hand, Imām Abū Ḥanīfah, Imām Shāfi'i, Imām Aḥmad ibn Ḥanbal and a group of Ṣaḥābah and Tābi'in have taken the word, 'Aw' in the sense of division of work. Thus, according to them, the sense of the verse is that there are different punishments which can be applied to various conditions of highway robbers and highway robberies. This position is also supported by a *hadīth* where, based on a narration from Sayyidnā Ibn 'Abbas رضي الله عنه, it has been reported that the Holy Prophet ﷺ had entered into a peace treaty with Abū Burdah Aslami. He broke the treaty when he robbed some people going to Madīnah to embrace Islam. Pursuant to this episode, Sayyidnā Jibra'il came with an injunction for punishment. The injunction stipulated that whoever killed, and looted property as well, should be crucified; and whoever killed, but did not loot, should be killed; and whoever looted, but did not kill anyone, should have his hands and legs cut apart from different sides; and whoever from them embraces Islam should have his crime pardoned; and whoever did not kill or plunder but restricted himself to scaring people, which caused a breach of public peace, should be exiled. If these people have killed a Muslim or non-Muslim citizen of Dār al-Islām - but, did not loot property - their punishment is : أَن يُشَنَّكُوا that is, all of them should be killed, even though the act of killing was directly carried out by some of them only. And if they killed and looted both, their punishment is : يُحَلَّبُوا that is, they should be crucified. The form it should take is that they be hanged alive, then their stomach be slit with a spear or something else. And if they have participated in looting only and have not killed anyone, their punishment is : وَتُقْطَعَ أَيْمَنُهُمْ وَأَنْجَلُهُمْ وَمِنْ خَلَافِ that is, their right hands be cut apart from the wrists and their left legs from the ankles. Here too, though this act of looting may have been performed directly only by some of them, yet the punishment will remain just the same for all of them, because whatever the doers of the act did, they did it with their trust in the cooperation and assistance of their accomplices, therefore, all of them are partners in the crime. And if they had yet to commit the crime of killing or plundering while they were arrested beforehand, their punishment is : أَن يُمْنَنُوا مِنَ الْأَرْضِ that is, they be kept away from the land they live in.

The sense of 'keeping away' or turning out from the land, according to a group of Muslim jurists, is that they should be turned out from

Dar al-Islām. Some others say that they should be turned out from the place where they have committed the crime of robbery. In cases like this, Sayyidnā 'Umar al-Faruq رضي الله عنه gave the verdict that should the criminal be turned out from one place and left to roam free in other cities, he was bound to harass the people there. Therefore, let a criminal like this be locked in a prison. This will become his 'keeping away' or turning out from the land for he cannot go and walk anywhere. Imām Abū Ḥanīfah has adopted this very view.

As for the question that armed attacks of this kind these days are no more restricted to looting of property or killing and bloodshed alone for there are frequent instances of raping and kidnapping women as well. So, if the statement of the Qur'ān : وَيَسْعُونَ فِي الْأَرْضِ كُفَّارًا (and run about trying to spread disorder in the earth) were to be taken as inclusive of such crimes, what punishment would they deserve? Here, apparently the Imām or Amīr or the ruler will have the option of enforcing whichever of the four punishments he deems fit in their case; and in the event that he does find the necessary proof of adultery as admitted by the Shari'ah of Islam, he would enforce the Hadd punishment for Zinā (adultery) as well.

Similarly, if the position is that no one was killed, no property was looted, but, some people did receive wounds at their hands, then, they would be subjected to the law of Qiṣāṣ (Even Retaliation) against the inflicting of wounds. (Tafsīr Mazhāri)

Towards the end of the verse (33), it was said: ذلِكَ لَهُمْ خَزْنٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ that is, the Islamic Legal Punishment to which they have been subjected here is humiliation for them in this world and certainly a token of punishment. As for the punishment of the Ākhirah, that is much harsher and more lasting. This tells us that the punishments of Hudūd, Qiṣāṣ or Ta'zīrat in this mortal world do not lead on to the forgiveness of punishments due in the Ākhirah unless the person sentenced repents and makes a genuine Taubah, following which he could hope to have the punishment of Ākhirah forgiven.

In the second verse (34) : إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْتُلُوهُمْ عَلَيْهِمْ (... except those who repent before you overpower them), an exception has been mentioned. The exception is that should the robbers and rebels were to repent - before they are surrounded and overpowered by government

forces, and are in a state when their position of strength is still operative - and decide on their own to abandon their practice of highway robbery, then, this Prescribed Punishment will stand dropped in their case. This exception is different from the general Law of Hudūd because in other crimes such as theft and adultery, if the criminal, after he has committed the crime and has been indicted by a Qādī court as guilty, were to prove that he had repented genuinely, then, though the punishment of the Hereafter (Ākhirah) would stand forgiven by virtue of this repentance, yet the Islamic Prescribed Punishment (حد شرعی) will not be forgiven in this mortal world - as it will be explained later, after some verses, under the punishment for theft.

The wisdom behind this exception is that, on the one hand, such severity has been maintained in the punishment of robbers that for the commitment of the crime - even if by one person out of a whole group - punishment is given to the whole group. Therefore, on the other hand, things have been made softer and lighter through this exception, that is, let them repent if they would, in which case, the punishment of the mortal world would also be forgiven. In addition to that, there is a strategic advantage here in this provision, that is, it is not always easy to control or overpower a powerful group, therefore, the door of persuasion has been left open for them so that they are induced to repent.

Yet another expedient consideration in this matter is that killing a person is an extreme punishment. Here, the drift of the Islamic Law is that it should happen as rarely as possible while, in a case of robbery, the killing of a whole group becomes necessary, therefore, the effort to reform them too, through persuasion, was continued simultaneously. The kind of effect it produced was that 'Alī Asadī who robbed passersby on the outskirts of Madīnah with the help of his group happened to hear one of those days the following verse of the Holy Qur'ān being recited by a Qārī in the caravan (under attack) : يَعْبَادُونَ الظُّلْمَيْنِ أَشْفَوْنَا عَلَىٰ (O My servants who have committed excesses against their own selves, do not lose hope in the mercy of Allah - Zumar, 39-53). When he looked for the Qārī and found him, he asked him to recite the verse once again. When he had heard the verse the second time, he put his sword back into the sheath, repented from robbery

and reached Madînah. At that time, Marwân ibn al-Hakam was the chief executive of Madînah. The well-known Shâhabî, Sayyidnâ Abû Hurairah رضي الله عنه held 'Alî Asadî by the hand and took him to the Amîr of Madînah. Before him, he recited this verse of the Qur'ân and said: You cannot give him any punishment.

The government was already helpless against their robbery and the disorder generated by it. Everyone was pleased with the outcome.

An event similar to this happened when Hâaritha ibn Badr rebelled, left the city and took to the practice of killing and plundering. But, Almighty Allah gave him the Taufîq (ability) later on when he repented and returned to Madînah. Then, Sayyidnâ 'Alî رضي الله عنه did not subject him to the ordained legal punishment (حد شرعى).

At this point, it is worth remembering that the waiver in the Islamic Legal Punishment (حد شرعى) does not make it necessary that the Rights of the Servants of Allah the criminal has trampled upon will also be forgiven. On the contrary, the fact of the matter is that anything valuable taken from anyone, which is still available, must be returned back. And if someone was killed or wounded, one is duty-bound to go through the consequences as stipulated under the Law of Qiṣâṣ (Even Retaliation). However, since Qiṣâṣ is the Right of the Servant of Allah, it could be forgiven if forgiven by the guardians of the person killed or by the person who holds that Right. Other than that, if someone has hurt someone else financially, it is necessary to vacate the liability (Damân), or have it forgiven by the person concerned. This is the favoured position of Imâm Abû Hanîfah and that of the majority of the jurists of Islam. A little reflection would show that this is a fairly obvious matter as the act of seeking deliverance from any infringement of the Rights of the Servants of Allah is a part of the act of *Taubah* (repentance) itself. *Taubah* without it remains just incomplete. Therefore, a robber or dacoit will be taken as genuinely repentant only when he pays for whatever Rights of the Servants of Allah he has infringed upon, or has it forgiven by them.

Verses 35 - 40

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَابْتَغُوا إِلَيْهِ الْوَسِيلَةَ وَ

جَاهِدُوا فِي سَبِيلِهِ لَعَلَّكُمْ تُفْلِحُونَ ﴿٣٥﴾ إِنَّ الَّذِينَ كَفَرُوا لَوْا
أَنَّ لَهُمْ مَا فِي الْأَرْضِ جَمِيعًا وَمِثْلَهُ مَعَهُ لِيُفْتَدُوا بِهِ مِنْ
عَذَابٍ يَوْمَ الْقِيَمَةِ مَا تُقْسِلَ مِنْهُمْ وَلَهُمْ عَذَابٌ أَلِيمٌ ﴿٣٦﴾
يُرِيدُونَ أَنْ يَخْرُجُوا مِنَ النَّارِ وَمَا هُمْ بِخَرْجِينَ مِنْهَا وَلَهُمْ
عَذَابٌ مُّقِيمٌ ﴿٣٧﴾ وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوهُمَا أَيْدِيهِمَا
جَزَاءً إِيمَانَكُمْ لَا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٣٨﴾ فَمَنْ
تَابَ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ
غَفُورٌ رَّحِيمٌ ﴿٣٩﴾ أَلَمْ تَعْلَمْ أَنَّ اللَّهَ لَهُ مُلْكُ السَّمَاوَاتِ
وَالْأَرْضِ طَيْعَذِيبٌ مَنْ يَشَاءُ وَيَغْفِرُ لِمَنْ يَشَاءُ وَاللَّهُ عَلَى كُلِّ
شَيْءٍ قَدِيرٌ ﴿٤٠﴾

O those who believe, fear Allah and seek the *wasīlah* of nearness to Him, and carry out Jihād in His way so that you may succeed. [35] Surely, those who disbelieve are such that if they have all that there is in the earth, and more as much besides it, to pay it as ransom against the punishment of the Doomsday, it shall not be accepted from them. And for them there is a painful punishment. [36] They will wish to come out of the Fire, but they are not to come out from there. And for them there is a lasting punishment. [37]

As for a man or woman who commits theft, cut off the hands of both to recompense them for what they earned, a deterrent from Allah. And Allah is Mighty, Wise. [38] And whoever repents after his transgression and corrects himself, then Allah shall relent towards him. Surely, Allah is Most-Forgiving, Very-Merciful. [39]

Do you not know that to Allah alone belongs the kingdom of the heavens and the earth? He punishes whomsoever He wills and forgives whomsoever He wills. And Allah is powerful over everything. [40]

Commentary

In verses previous to those cited above, the Islamic Prescribed Punishment of robbery and rebellion, as well as the details of injunctions relating to them, were mentioned while the Prescribed Punishment for theft is coming up after three verses later. The three verses which appear in between talk about Taqwā (the fear of Allah), obedience to and the worship of Allah, inducement to Jihād (fighting or struggling in the way of Allah) as well as the ruinous effects of disbelief, rejection, obstinacy and disobedience. A deeper look into this particular style of the Qur'an would reveal that its oft-recurring approach is not simply to state the letter of the law of penalty and punishment as some cold and coercive command from the law giver and just leave it at that, instead, by taking the approach of an affectionate nourisher and nurturer, it also smooths out the edges of the human mind to prepare it for its ultimate abstention from crimes. And when it awakens the human minds to the awaiting realities of the fear of Allah and the Ākhirah (Hereafter) and when it makes the everlasting blessing and bliss of Paradise appear almost in sight, it goes on to change hearts replacing their chronic taste for crime with instant distaste. This is the reason why words similar to: اَتَّقُوا اللَّهَ (fear Allah) are repeated after stated laws of crime and punishment. Here too, three things have been commanded:

1. The first one is : اَتَّقُوا اللَّهَ that is, 'fear Allah', for it is the fear of Allah alone which can really stop human beings from committing crimes openly and secretly.

2. The second one is : اَبْشِرُوا النَّاسَ بِالْوَسِيلَةِ that is, 'seek the nearness of Allah.' The word, "وسيلة" : *wasīlah*, left untranslated, is a derivation from the verbal noun, '*waslun*', which means to make effort to become close to someone. This word, whether spelt with the letter, *sīn* (سين), or *ṣad* (صاد), is used almost in the same sense. The only difference is that *waslun* spelt with the letter, *Ṣad* (صاد) refers to becoming close in the absolute sense, while, *waslun* spelt with the letter, *sīn*, is used to denote seeking to gain nearness with longing and love. Related details appear in the Ṣīḥah of Jauharī and in the Mufradat of Rāghib al-Īsfahānī. So, *wuṣlah* (وصله) or *waṣlāh* (وصله) spelt with the letter, *Ṣad*, refer to something which brings about nearness or conjunction be-

tween two things, whether that nearness comes to be through longing and love, or in some other form. As for the word, *wasîlah* (واسیلہ) spelt with the letter, *sîn*, it means that which brings someone closer to someone else through liking and love. (Lisan al-'Arab, Mufradat al-Qur'ân)

The act of seeking to gain access to Allah - that is, 'wasîlah' to Allah, to be precise - is anything which brings a servant of Allah nearer to his or her sole object of worship with all longing and love. Therefore, the righteous elders, the *Šâhâbah* and *Tâbi'in* have explained the word, 'wasîlah', to mean obedience, nearness, faith and righteous conduct. Sayyidnâ Hudhayfah, as reported by Hâkim, said : 'Wasîlah' means nearness and obedience, and Ibn Jarîr has reported the same on the authority of 'Atâ', Mujâhid and Hasan al-Bâsri, may the mercy of Allah be upon them all.

Also, Ibn Jarîr and others have reported from Qatâdah a *Tafsîr* of this verse which is : تَقْرُبُوا إِلَيْهِ بِطَاعَتِهِ وَالْعَمَلِ بِمَا يُرِضُّكُمْ . It means : Seek nearness to Him by obedience to Him and by doing deeds which please Him. Therefore, the gist of the explanation of this verse is that one should seek the nearness of Allah through '*Imân* (faith) and '*A'mâl* (good deeds).

Appearing in the *Musnad* of Ahmad, there is a sound (*Sâhih*) *hadîth* in which the Holy Prophet ﷺ has been reported to have said: 'Wasîlah' is a high rank of Paradise, above which there is no rank. You pray to Almighty Allah that He gives me that rank.

Again, in a narration from *Sâhih Muslim*, the Holy Prophet ﷺ has been reported to have said: When the Mu'adhdhin (مُؤذن) : Muezzin) calls the *Adhâan*, you keep saying what he says. Then, recite *Durûd* on me and pray that I be blessed with 'Wasîlah.'

These *aḥâdîth* tell us that 'Wasîlah' is a special rank of *Jannah* (Paradise) which is identified particularly with the Holy Prophet ﷺ. As for the command to seek and find 'Wasîlah' given to every believer, it seems to be, on the surface, contrary to this particularity. But, the answer is fairly clear that the way the highest station of guidance is special to the Holy Prophet ﷺ who always prayed for it, but, its elementary and intermediary ranks of guidance are common and open to all Muslims - similarly, the high rank of 'Wasîlah' is particular

to the Holy Prophet ﷺ and all ranks after it are open and common to all believers through the linkage of their love for him.

In his Letters, the famous renovator of the second millennium of Islam in India, Mujaddid Alf-Thānī, and Qādī Thana'ullāh of Pānipat, in his Tafsīr Mazhari, have both warned that the sense of longing and love embedded in the word, 'Wasīlah', clearly shows that advancement in the ranks of 'Wasīlah' depends on the love for Almighty Allah and His Messenger - and love comes through the following of Sunnah, the words and deeds of the Holy Prophet ﷺ. This is because Almighty Allah says: ﴿فَإِنَّمَا يُحِبُّكُمُ اللَّهُ أَعْلَمُ بِكُمْ﴾ (Say [O Prophet], "If you do love Allah, follow me; Allah shall love you ..."- 3:31). Therefore, the more particular one is in following the Sunnah of the Holy Prophet ﷺ in acts of worship, transactions, dealings, morals, social living, practically in all departments of life, the more beloved of Allah one shall be, and the more widening becomes the gyre of this love, the closer and nearer to Allah one shall be.

Now, after this lexical explanation of the word, 'Wasīlah,' and the exegetical notes from the Ṣahābah and Tābi'in, we do know how everything which becomes the means of achieving the pleasure and nearness of Allah is, for a human being, the 'Wasīlah' of becoming close to Allah. As included in it are faith ('Imān) and good deeds (*al-a'māl al-salih*), so included therein are the company and the love of prophets and righteous people as well, for that too is one of the causes of the pleasure of Allah - and so, praying to Allah Almighty by making them a Wasīlah' should be correct, as was done by Sayyidna 'Umar رضي الله عنه when he, at the time of a famine, making Sayyidna 'Abbas a 'Wasīlah,' made a prayer for rains before Almighty Allah. The prayer was answered.

It is reported that the Holy Prophet ﷺ had himself taught a blind Saḥābi to pray with the words which are as follows : ﴿أَللّٰهُمَّ إِنِّي أَسْأَلُكَ وَآتُوكَ لِيَكَ مُحَمَّدَ رَبِّيَ الرَّحْمَةُ﴾ (O Allah, I seek from You, and I ask for Your attention with (the Wasīlah of) Your Prophet, Muhammad, the Prophet of Mercy. (Manār)

3. Before taking up the third command, that of Jihād, in this verse (35), it will be useful to recollect the first command, that of Taqwā, then the command to seek nearness to Allah through faith and good

deeds, and now in the end it was said: وَجَاهُذَا فِي سَبِيلِهِ (and carry out Jihād in His way). Though Jihād was included under 'good deeds' yet it was to spell out the higher status of Jihād among 'good deeds' that Jihād was mentioned separately and distinctly - as confirmed by a saying of the Holy Prophet ﷺ which is وَزَوْدٌ عَلَى إِيمَانِكُمْ أَجْهادٌ : that is, Jihād is the highest peak of Islam. Moreover, there is yet another element of wisdom why Jihād has been mentioned distinctly at this place. It will be recalled that the unlawfulness of spreading disorder on the earth, alongwith its worldly and other-wordly punishment, was mentioned in previous verses (32, 33). Since Jihād too, given a surface view of it (or, as those allergic to it would love to believe), appears to be some form of disorder on the earth (*al-fasād fi al-ard*), therefore, it was possible that someone ignorant could just fail to understand the difference between Jihād (fighting in the way of Allah) and *Fasād* (spreading disorder). To offset this possibility, the spreading of disorder on the earth was forbidden first and it was after that that the command of Jihād was mentioned distinctly and the difference between the two was pointed out by the addition of the words : فِي سَبِيلِهِ (in His way). This is because the killing and plundering of the property of people in robberies and rebellions is for the sole purpose of personal aggrandizement and other nefarious objectives while, should it ever come to happen in a Jihād, it will still be for the initial purpose of upraising the Word of Allah and eliminating oppression and tyranny. There is a world of difference between the two.

Moving on to the second (36) and the third (37) verses, one notices the manner in which the grave curse of Kufr (disbelief), Shirk (the associating of partners in the Divinity of Allah) and sin has been pointed out. It is so poignant that even a little reflection on it could bring an instant revolution in the lives of men and women of such persuasion compelling them to abandon all Kufr and Shirk and sin. To explain the curse of sinful living a little further, it can be said that sins in which one gets involved usually is because of personal desires and needs or for the desires and needs of family and children. Since their fulfillment comes through an increase in wealth and property, one goes after amassing wealth and property without making any distinction between what is Halāl (lawful) and what is Ḥaram (unlawful) in it. In these verses, Almighty Allah has censured the acquisition mania

of such people which will prove to be futile in the ultimate analysis because its cure lies in realizing that things of comfort collected to satisfy a short lived span of life by working hard day and night still remain unattained. More and more stays to be the order of every other day in life. What begins must end and this race of gold and greed will also end when the punishment of the Doomsday will appear in sight and, at that time, if these people were to offer all they had collected in the mortal world, wealth and property, things and things of comfort, taste and value, offer all of it in return for their release from the punishment, then, this would not be possible anymore. Even if the wager is increased higher, suppose everything of value were to be owned by one person, nay, let us say twice as much, and if he were to offer all of it to have his release from the punishment, still then, nothing would be accepted from him and he will not have his deliverance from the punishment of the Hereafter. That this punishment would be everlasting for disbelievers has been made clear through the third verse (37).

The fourth verse (38) reverts to the subject of the punishment of crimes where the Islamic Legal Punishment of theft has been described. The punishment for theft belongs to the category of *Hudūd* which is one of the three kinds of Islamic Legal Punishments discussed earlier (under the *Tafsīr* of verses 33 and 34). Since the Holy Qur'ān has itself fixed this punishment, it has not been left at the discretion of the relevant authorities. The Holy Qur'ān has determined it as the Right of Allah (*Haqqullāh*), therefore, it is called the *Hadd* of *Sariqah* (The Islamic Legal Punishment of Theft). The words of the verse are:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطُعُوا أَيْدِيهِمَا جَزَاءً بِمَا كَسَبُوا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

As for a man or woman who commits theft, cut off the hands of both to recompense them for what they earned, a deterrent from Allah. And Allah is Mighty, Wise.

Noteworthy here is the fact that the address in Qur'ānic injunctions is generally to men wherein women are also understood as included consequentially. In *Salāh*, *Sawm*, *Hajj*, *Zakāh* and in all injunctions of the Shari'ah, this is the general operating principle of

Qur'an and Sunnah. But, in the case of the punishment for theft and adultery, the text here does not limit itself to addressing men only, instead of which it addresses its command to both sexes mentioning them separately.

One reason for doing so is that this is a matter of Hudûd in which the least doubt could cause it to be dropped. Therefore, women were not left as implied under the address. They were, rather, mentioned explicitly.

Understanding the Islamic Law of Sariqah (Theft)

Something else we should find out at this stage is the very sense of the word, 'Sariqah' and its definition as determined in the Shari'ah of Islam. According to Al-Qamus, the Arabic Lexicon, if anyone takes what belongs to someone else, from a secured place, without his or her permission, clandestinely, it is called "Sariqah." And this is its Islamic legal definition too. So, in the light of this definition, in order that Sariqah be proved, a few ingredients must exist:

1. BEING PRIVATELY- OWNED : The property concerned must have been owned privately by an individual or group. The stealer should own nothing in it, nor should there be any doubt of such ownership, nor should there be things in it in which the rights of common people are equal, such as, institutions of public welfare and their belongings. This tells us that should someone take something in which he or she has ownership rights, or there is a doubt of such ownership, or in which the rights of common people are equal, then, the Hadd of Sariqah, the Islamic Prescribed Punishment, will not be enforced against the stealer. However, the relevant authority of the time could enforce punitive punishment (Ta'zir) at his discretion.

2. BEING SECURED : It means that the stolen property must be secured as in a locked house or under a security guard. Property not in a secured place, if picked up by someone, would also not render that person liable to be charged with the Hadd of Sariqah. However, should there be even a doubt in the property concerned being secure, even then, the Hadd of Sariqah will stand dropped. Considerations of sin and punitive punishment (Ta'zir) are a separate matter.

3. BEING WITHOUT PERMISSION : If a person, who has been

given the permission to take or pick up and use the property concerned, chooses to take it away for good, the Hadd of Sariqah will not be imposed. And should there be even a doubt about the stealer having such permission, the Hadd will stand dropped.

4. TAKING CLANDESTINELY : This is because the looting of someone's property openly is no theft. It is robbery, the punishment for which has already been stated. The point is if it is not by stealth, the Hadd of Sariqah will not be imposed on the person concerned.

After having heard the details involved in all these conditions, you would have already realized that theft as known to us carries a general and wide sense. Every single person who indulges in it is not legally liable to the Hadd of Sariqah, that is, the punishment of cutting hands. Instead of that, this Prescribed Punishment shall be enforced against that particular form of theft in which all these ingredients have been found present.

Along with it, you also know that situations in which the Hadd for theft is dropped, it is not at all necessary that the criminal would go scot-free. In fact, the relevant authority of the time could award punitive punishment against him at his discretion, which could even be physical, as that of lashes.

In the same way, let it not be surmised that, in situations where the absence of some condition of Sariqah restrains the enforcement of the Hadd Punishment, the act itself would become legally permissible and lawful - because, as explained earlier, we are not talking about sin and the punishment of the Hereafter here. The concern here is that of the temporal punishment, and that too of a particular kind of punishment. Otherwise, the property of a person taken without his pleasure and permission, no matter how, shall remain Ḥarām (unlawful), causing punishment in the Hereafter - as clarified in the verse : ﴿لَا تَأْكُلُ مِمْ كُلَّ أَكْوَافِكُمْ بِإِنْسَكُمْ بِالْبَاطِلِ﴾ (And do not eat up each other's property by false means - 2:188).

Also worth noting here is the fact that the words used by the Qur'an in the matter of theft are the same as those used about the punishment of adultery. But, the difference is that, in the matter of theft, the mention of man appears first and that of woman follows,

while, in the case of adultery, the arrangement has been reversed where woman has been mentioned first. Thus, in the punishment of theft, it was said: وَالشَّارِقُ وَالسَّارِقَةُ (a man or a woman who commits theft - 5:38) while, in the punishment of adultery, it was said: اَلْزَانِيَةُ وَالزَّانِي (the woman and the man guilty of fornication - 24:2). Commentators have indicated many elements of wisdom in this reversal of word order, but the one that appeals most is that the crime of theft when committed by man as compared to that committed by a woman is more grave because Almighty Allah has blessed him with the kind of strength to earn his living which a woman does not have. Should a man who, despite that so many doors of earning his living are open to him, stoop so low as to commit the disgraceful crime of theft, really increases the gravity of his sin. And when it comes to the matter of adultery, Allah Almighty has blessed a woman with natural modesty and secured atmosphere which leaves no reason for her to fall into the lower levels of immodesty which would be a grave crime indeed. Therefore, in theft, the mention of man precedes while, in adultery, that of woman.

After stating the Hadd Punishment for theft in this verse (38), two sentences have been added. The first sentence is: حَذَّرَنَا كَسْبًا (to recompense them for the evil deed they committed and the second sentence is: تَعَذُّرًا مِّنَ اللَّهِ (a deterrent from Allah). The later is composed of the words, 'Nakāl' (a deterrent) and 'min Allah' (from Allah). Lexically, the Arabic word, 'Nakāl' means a punishment which is exemplary, something which teaches a lesson to others as well so that they too abandon any intentions of committing crimes. Therefore, a translation of this word in the idiom of any other language would have to have a sense of lesson and dissuasion both. The hint given here is that the stern punishment of cutting hands is based on a consideration which is special and wise. In simple words, it amounts to punishing one and chastening the rest so that this ugly crime is eradicated totally. Then, by adding 'min Allah' (from Allah), a pointed reference has been made to yet another subject of importance, that is, there are two ways of looking at the crime of theft. Firstly, a person may take the property belonging to someone else without any right to do so which inflicts injustice on the later. Secondly, this person acted counter to the command of Allah. Keeping the first aspect in sight, this punishment is the right of the victim of injustice which requires that the punishment,

if pardoned by the holder of the right, will stand forgiven - and this is the customary practice in all cases of Qiṣāṣ (Even Retaliation). Now looking at it from the second aspect, this punishment is for having acted contrary to the command of Allah. It requires that this punishment will not be forgiven even if it were to be forgiven by the person who has been the victim of the theft - unless, of course, forgiven by Almighty Allah Himself. This is called Ḥadd or ḥudūd in the terminology of the Sharī'ah of Islam. So, by determining the second aspect through the addition of '*min Allah*' (from Allah), the hint given is that this punishment is Ḥadd - not Qiṣāṣ, that is, in a manner of saying, the punishment has been awarded for what constitutes a Crime against the State! Therefore, even if the person who is the victim of the theft were to forgive, the punishment would still not be dropped.

Finally, towards the end of the verse (38), by saying: ﴿وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾ (And Allah is Mighty, Wise), answer has been given to the doubt so widely entertained these days, that is, this punishment is very harsh. Not resting at that, there are the loudmouthed and the uninformed among them who would not even fight shy of saying that this punishment is savage. Refuge with Allah! These words are there to point out that the introduction of this severe punishment is not only that it is an outcome of Allah's being Mighty and Powerful, but that it also based on His being Wise as well. The Islamic Legal Punishments which the modern highbrows of the West label as harsh and savage shall be taken up in details with comments on the wisdom behind them, their need and benefits, soon after we have completed the explanation of the present set of verses.

The next verse (39) says:

فَمَنْ تَابَ مِنْهُ بَعْدِ ظُلْمِهِ وَاصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ طَرَفَهُ إِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ

And whoever repents after his transgression and corrects himself, then Allah shall relent towards him. Surely, Allah is Most-Forgiving, Very-Merciful.

It will be recalled that forgiveness was also mentioned in connection with the Prescribed Punishment for robbery appearing a few verses earlier (34) - and forgiveness has been mentioned after the punishment

for theft as well. But, the statement of forgiveness at both places has a particular difference and it is on the basis of this difference that the sense of forgiveness in both punishments has been taken differently by Muslim jurists. While ordaining the punishment for robbery, giving an exception, Almighty Allah has said: ﴿إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَكْفُرُوا إِذْ عَلِمْتُمُوهُمْ﴾ (except those who repent before you overpower them - 5:34) the outcome of which is that the Hadd Punishment for robbery mentioned in the verse provides an exemption whereby the one who repents - before robbers are overpowered and arrested by the government - shall have his Hadd Punishment forgiven. As for the forgiveness mentioned after the punishment for theft, it does not have the exemption from this temporal punishment. It is rather in terms of the Hereafter that this repentance shall be accepted towards which a clear indication exists in the words: ﴿فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ﴾ (then Allah shall relent towards him). In other words, the relevant ruler of the time will not abandon the Hadd Punishment because of this repentance, instead of that, Almighty Allah will, by forgiving their crime, grant deliverance to them from the punishment of the Hereafter. Therefore, Muslim jurists almost unanimously agree that the Hadd Punishment for robbery shall not be enforced on robbers who repent before they are arrested. But, should a thief were to forsake and repent from stealing after having committed a theft - whether before or after arrest - then, the Hadd of Sariqah, the Islamic Legal Punishment, which is a temporal punishment, will not be forgiven. That the sin is forgiven and deliverance from the punishment of the Hereafter has been achieved is not contrary to this.

The later verse (40) says:

أَلَمْ تَعْلَمْ أَنَّ اللَّهَ لَهُ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ طَيْعَنْدِيْنَ مَنْ يَشَاءُ وَيَغْفِرُ لِمَنْ يَشَاءُ وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ

Do you know that to Allah alone belongs the kingdom of the heavens and the earth? He punishes whomsoever He wills and He forgives whomsoever He wills. And Allah is powerful over everything.

This verse is linked with and homogeneous to previous verses which feature stringent injunctions of the Islamic Legal Punishments for robbery and theft. A shallow look at these injunctions could give the false

impression of their being contradictory to human dignity. It is to remove this doubt that Almighty Allah has, in this verse, initially stated that He alone is the real Master of all the universe. Then, He says that He alone is the Absolute Power. In between, comes the statement that it is not only that He punishes. He forgives as well, and that forgiveness and punishment depend on His Wisdom, for the way He is the Absolute Master and the Absolute Power, so is He Absolutely Wise too. There is no human power which can gauge the extents of His mastery and domain so shall there be no human reason which can fully fathom the countless manifestations of His Wisdom - and that which it would pass on to human beings by virtue of pondering through principles is sufficient enough to put their hearts at peace.

What is Benign and What is Savage?

People in the West and those influenced by their education and culture commonly object that Islamic punishments are harsh. And as pointed out a little earlier, there are some heedless people who do not even hesitate to say that these punishments are savage and undignified.

Before we deal with this matter, it would be useful to keep what has been stated earlier in sight. We know that the Holy Qur'an has itself determined and fixed the punishments for only four crimes which are called *Hadd*, in the terminology of the Islamic Shari'ah. The punishment of robbery is the cutting of the right hand and the left foot; the punishment of theft is the cutting of the right hand from the wrist; the punishment of adultery is one hundred lashes in some situations, and stoning to death in some others; the punishment of making a false accusation of adultery is eighty lashes. The fifth Islamic Prescribed Punishment (*Hadd*) is that of drinking which is eighty lashes as fixed under the consensus of the *Sahabah* of the Holy Prophet ﷺ. With the sole exception of these five crimes, the punishment of all other crimes has been left to the discretion of the ruler of the time so that the relevant judge may award the kind and amount of punishment with due consideration of the crime, the criminal and the circumstances. This is a matter in which it is also possible that some particular system designed to delimit and apportion punishments is established in consultation with those fit to guide and advise, and *Qadis* or judges are

bound with it. This is what happens these days when penal laws are generally enacted through legislative assemblies, and Qādis or judges award punishments within limits already identified. Although, in the five crimes the punishment for which has been fixed by the Qur'ān, or through a consensus (*Ijmā'*), and in which no individual or party or assembly has any right of alteration or substitution, but, in them too, if the proof of the crime is not available through the Law of Evidence prescribed by the Shari'ah, or there be the proof of the crime but conditions under which this punishment is enforced may not be complete, and the fact of the crime stands proved in the sight of the Qādī or judge, still then, in that situation too, the Hadd Punishment (حد شرعی) will not be enforced, instead of which, the punishment given will be punitive (Ta'zīrī). Along with it, there is the standing rule of Islamic Law that the benefit of doubt goes to the person accused of a crime. A doubt about anything in the proof of the crime or the conditions of the crime causes the Hadd Punishment to be dropped. But, in the event that there be the necessary proof of crime available, the punishment given will be punitive (Ta'zīrī).

This tells us that there will be many more situations in which the Hadd Punishment will not be enforced and, in their place, punitive punishments will be awarded subject to the discretion of the ruler of the time. Since punitive punishments have not been predetermined by the Shari'ah, they can be changed or tailored to suit the needs of every time and every circumstance just like the general laws of the land. Therefore, at least, in this field, nobody has room for any objection. Now the 'debate' is reduced to the punishments of five crimes only, and that too, in their particular situations. For example, let us take theft and see that the punishment of cutting the hand has not been imposed by the Shari'ah on every theft, in an absolute sense - that is, theft as we know it in our common usage. This is no Sariqah. Sariqah, the crime which is punished by cutting the hand, has a peculiar definition of its own, details about which have appeared earlier (under the sub-heading: 'Understanding the Islamic Legal Punishment of Sariqah') and which can be briefly defined here as the taking out of someone's property from a secured place, by breaking the security arrangements, unlawfully and secretly. According to this definition, many forms recognized as common thefts stand eliminated from the standard defini-

tion of the Hadd of Sariqah. For instance, the condition of a secured place tells us that property stolen from commonly used public places such as Masjid, masallā of 'Id (area earmarked for the large congregational prayers on the occasion of 'Idul-Fitr and 'Idul-Adhā), Park, Club, Railroad Station, Waiting Room, Train, Airplane etc., or stealing fruits hanging on trees, or stealing honey will not cause the Hadd of Sariqah to be imposed against the thief, instead of that, punitive punishment will be given to the culprit as generally done in most countries. Similarly, take the example of a person you have allowed to enter your house - whether he is your servant or maid or a worker on wages or a builder on contract or a friend or relative - now should he take something away from your house, then, though he is included under the definition of common theft and is deserving of the punitive punishment for it, yet, the Islamic Legal Punishment of cutting the hand will not be enforced on him - because he entered the house with your permission and the arrangement of legal security is not complete as far as he is concerned.

Similarly, incidents like someone picked someone else's pocket, or snatched away cash or jewellery from someone's hand, or extracted something by fraud, or went back on his word when asked to return what he had agreed to keep in trust are all unlawful and impermissible, and definitely included under customary thefts, but, the punishment for all these is punitive which depends upon the discretion of the ruler. Since these are not included under the definition of legally culpable 'Sariqah,' no amputation of hand will take place.

Likewise, the hand of a stealer of coffin clothes will not be cut because, first of all, it is in no secure place, then the shroud itself is not in the 'ownership' of the deceased, though this act of the stealer is gravely unlawful. For this, he will have his punitive punishment at the discretion of the ruler. In the same manner, if someone commits a theft in what was jointly owned property in which the stealer too had some share - whether it was a joint property from inheritance or from commercial partnership - it is a situation in which, since some part of the ownership of the stealer is also included therein, the doubt about such ownership will cause the Islamic Legal Punishment (Hadd) to be dropped and punitive punishment will be given.

As for all these conditions, they relate to the actual completion of the crime, a brief outline of which you have seen above. Now what comes next is the completion of the proof. In this matter of enforcing Ḥudūd, the Shari'ah has also made its Law of Evidence unmistakeable by keeping it very distinct and cautious as compared to what concerns other common matters. In the punishment of adultery, imposed there is the condition of four witnesses in place of two - and that too, while they give such eye witness as would not leave any word doubtful therein. Though, in the case of theft, only two witnesses are sufficient, yet, even for these two, some additional conditions, other than those commonly required in witnessing, have been imposed. For example, there are other matters in which, if needed, the Qādī or judge has the option to accept the witness of a sinning person if he is satisfied that the person, despite his being a sinner practically, does not lie. But, in the case of Ḥudūd, the Qādī or judge does not have the right to accept his witness. Common matters can be judged based on the evidence given by one man and two women. But, in Ḥudūd, the evidence of two men is necessary. In common cases, the Shari'ah does not consider Tamādī (being time-barred) as valid excuse - a witness given by someone can be accepted irrespective of the time lag since the event occurred. But, in Ḥudūd, if a testimony is not given immediately, instead of that, was given after one month or was delayed more than that, then, it will not be acceptable.

This brief outline of the conditions of the enforcement of the Ḥadd of Sariqah appearing above has been taken from the highly authoritative book of the Hanafi Fiqh, *Bada'i' al-Ṣanā'i'*.

The outcome of all these conditions is that the Ḥadd of Shari'ah, the Islamic Prescribed Punishment, will be enforced only in a situation when it is strictly in accordance with the rules of procedure determined by the inviolable Shari'ah of Islam that the crime, as well as, its proof are found conclusively complete - and so complete too as would leave no aspect of it doubtful. This tells us that the Shari'ah has done two things simultaneously - it has, on the one hand, fixed the punishment of these crimes, as required in its wisdom, being strict as they are; but, on the other hand, it has also taken extreme precaution in the enforcement of the Ḥudūd of Islamic Law. The Law of Evidence as

applicable to Hudūd is also different from the Law of Evidence as applicable to common matters, and is certainly based on extreme precaution. The slightest shortfall in it renders the Hadd of the Shari'ah to be changed into punitive punishment. Similarly, in the event of any shortcoming being found in determining the completion of the crime, the Hadd of the Shari'ah is dropped and punitive punishment gets activated in its place. The practical outcome of this is that the far-out occasion of enforcing the Hudūd of the Shari'ah would present itself only very rarely (or, as they would say in charged English, only once in a blue moon!) Under normal conditions, even in crimes which fall under Hudūd, the punishments given are punitive. But, in a case, where the completion of the crime and the completion of the proof conjoin, even though in one per cent cases, the punishment given is very stringent, something which would inspire awe, something mind-boggling and heart-rending, something which would cause the next aspirant cold feet before even touching a crime like that. This kind of punishment, notwithstanding objections, becomes the source of eradication of crimes and the blessing of public peace for ever. This stands in stark contrast against societies built around penal laws with which hardened criminals keep playing as some sort of sport they enjoy. They sit in jails making programs to do what they have been doing all along much better next time they are out there. There are countries where the Hudūd of the Shari'ah are imposed even now. A look at conditions which prevail there would bring the reality in the open. You do not see there a lot of people with amputated hands, nor is there an event of stoning to death (*Rajm*) for years and years together. But, such is the standing awe and dread and fear of these punishments in hearts that theft, robbery and immodesty do not seem to exist there.

Muslims have the first-hand and direct knowledge about conditions in Saudi Arabia because Muslims of all classes and countries have the good fortune of being there in connection with Hajj or 'Umrah. Five times everyday, everyone sees that shops and stores are open. Merchandise worth millions is lying there and their owner leaves for the Sacred Mosque at prayer time without closing them - and comes back from there only after having made his prayers in perfect peace. He

never has any scruples about anything having disappeared from where he had left it. Then, this is not a matter of one day. This is a matter of whole life and how it goes on. Do this in any 'civilized' country of the world, you will end up with hundreds of thefts and robberies in a single day. Strange are the ways of those who claim to be the standard bearers of civilization and human rights. They are compassionate to professional criminals but they have no mercy for the whole humanity harassed by them. In cold reality, showering mercy on one criminal amounts to being tyrannical to the whole humanity. This attitude is the greatest cause of disturbing public peace and tranquility. This is the reason why He, who is the Lord of all universes and worlds, and who provides sustenance to the virtuous and the vicious, the pious and the polytheists, the saints and the sinners, and who gives to snakes, scorpions, lions and wolves their livelihood, and whose mercy extends to all, it was He who, when He revealed the religious laws of Hudūd in the Qur'an, also said along with it: وَلَا تُنْهِيَ الْمُنْكَرُ عَنِ الْمُنْكَرِ فِي دِينِ اللَّهِ that is, 'do not show mercy to these criminals in enforcing the Hudūd of Allah.' On the other hand, He declared Qiṣāṣ (the Law of Even Retaliation) to be the life of humanity: وَلَكُمْ فِي النِّفَاقِ حَيَاةٌ يَا أَيُّوبَ that is, 'for you in Qiṣāṣ there is life, O people of understanding.' It appears that those who oppose and obstruct the institution of Islamic Hudūd, just do not wish that crimes be eradicated. Otherwise, as far as mercy is concerned, who else, if not Islam, can be the teacher? It is Islam which has recognized the right of even enemies and killers in the heat of the battlefield where it demands: Hold your hands before women, hold your hands before children, hold your hands before the aged, and do not kill the religiously observing not fighting against you on the battlefield but are busy with worship in their way.

What is most astonishing is the cold fact that objections against Islamic punishments are raised by, of all the people, those have their hands red with the blood of hundreds and thousands of innocent and blame-free human beings of Hiroshima even to this day, human beings who may have never dreamed of fighting and killing in a battlefield and included among them are women and children and old people, a

whole lot of human beings indeed! And these are the people whose fury has still not subsided even after the tragedy of Hiroshima and who are still going ahead with all sorts of goals and projects and experiments to build and stock nuclear weapons of mass destruction.

Other than this, there is not much we can say, except raise our hands in prayer - May Allah remove the curtains of selfishness from their eyes and may He guide them towards the true Islamic methods of establishing peace in the world.¹

Verses 41 - 43

يَا أَيُّهَا الرَّسُولُ لَا يَعْزِزُنَّكَ الَّذِينَ يُسَارِعُونَ فِي الْكُفَّارِ مِنَ
الَّذِينَ قَاتَلُوكُمْ أَمْنًا بِأَفْوَاهِهِمْ وَلَمْ تُؤْمِنْ قُلُوبُهُمْ هُوَ مِنَ الَّذِينَ
هَادُوكُمْ سَمِعُونَ لِلْكَذِبِ سَمِعُونَ لِقَوْمٍ أُخْرَى إِنْ لَمْ يَأْتُوكُمْ
يُحَرِّفُونَ الْكَلِمَ مِنْ بَعْدِ مَوَاضِعِهِ هُوَ يَقُولُونَ إِنْ أُوتِيتُمْ هَذَا
فَخُدُودُهُ وَإِنْ لَمْ تُؤْتَوهُ فَاحْذَرُوهُ طَوْمَنْ يُرِيدُ اللَّهُ فِتْنَةً فَلَنْ
قُلْلِكَ لَهُ مِنَ اللَّهِ شَيْئًا طَوْمَنْ يُرِيدُ اللَّهُ أَنْ يُظْهِرَ

1. This is the basis of the nuclear conflict among nations. The haves want to keep what they have and stop others from having it. If others have it, that will be 'proliferation'. The power to destroy must stay with the powerful. Because, powerful is responsible. But, was it? So, being powerful, or mutually cooperating powerfuls, is no guarantee that nuclear weapons will not be used. Human beings of one country sitting on their nukes and talking about world peace is hardly believable.

Let's say Amen to the prayer.

A word about the use of the word, 'deterrent' with nuclear weapons. They are there, just in case ... They are supposed not to be used first. They are for retaliation. The having of nuclear weapons means that everybody should behave, or else! So, they are 'deterrants', telling people to be careful and not mess around. So human beings can have deterrents to check the irresponsible behaviour of others, the behaviour of 'rogue' states, for example. Now, if God were to enforce His own deterrent against criminals, robbers and thieves and fornicators, in His wisdom, how could that become 'savage' overnight? Or, is it that what a set of human beings can do in their 'self-interest', cannot be done by God, in His Wisdom? ... Mercy! (Tr.)

قُلُوبُهُمْ طَّلَبُوهُمْ فِي الدُّنْيَا حِزْيٌ وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ﴿٤١﴾ سَمِعُونَ لِلْكَذِبِ أَكْلُوْنَ لِلسُّحْتِ طَفِيلٌ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضْرُوكُ شَيْئًا وَإِنْ حَكَمْتَ فَاحْكُمْ بَيْنَهُمْ بِالْقِسْطِ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴿٤٢﴾ وَكَيْفَ يُحَكِّمُونَكَ وَعِنْهُمُ التَّوْرَاةُ فِيهَا حُكْمُ اللَّهِ ثُمَّ يَتَوَلَّوْنَ مِنْ بَعْدِ ذَلِكَ طَوْبًا وَلَئِكَ بِالْمُؤْمِنِينَ ﴿٤٣﴾

O Messenger, those who race towards disbelief should not be a cause of grief for you - those who say with their mouths, "We believe," while their hearts do not believe, as well as those who happen to be Jews. They are listeners of the lie, listeners for other people who did not come to you. They displace the words after their having been properly placed. They say, "If you are given this, take it, and if you are not given this, then avoid." And the one whom Allah wills to put to trial, for him you shall never be able to do anything against Allah. They are the ones whose hearts Allah did not intend to purify. For them there is humiliation in this world. And for them there is a great punishment in the Hereafter. [41]

Listeners of the lie! Eaters of the unlawful! So, if they come to you, judge between them or turn away from them. And if you turn away from them, they can do you no harm. And if you judge, judge between them with justice. Surely, Allah loves those who do justice. [42] And how do they ask you to judge while the Torah is there with them having the judgement of Allah? Still, they turn away, after all that. They are no believers.

[43]

Sequence of the Verses

Continued from the third Section of Sūrah al-Mā'idah was the subject around the People of the Book. In between, some other subjects, though very few, appeared where particularly appropriate. Now, the

text resumes that subject again which goes on further ahead. The People of the Book already had two groups among them. Joining them was a third group. They were really Jews who had become Muslims hypocritically. They would show their Muslim face before Muslims but when they sat with their co-religionist Jews, they mocked Islam and Muslims. The three verses appearing above concern the doings of these three groups which show that they prefer their desires and opinions over the injunctions and instructions of Almighty Allah and keep trying to interpret and mould them to their own choices. These verses tell us about the disgrace and evil end of such people in this world as well as in the Hereafter. As a corollary, there appear some guiding principles and injunctions for Muslims.

The Background of the Revelation

Two events which are the cause of the revelation of the cited verses relate to Jewish tribes who lived in the vicinity of Madīnah during the blessed period of the Holy Prophet ﷺ. One of these events was that of Qatl and Qiṣāṣ (killing and retaliation) and the other, that of Zinā (fornication) and its punishment.

It is not hidden from anyone who knows history (as it is) that tyranny prevailed all over before the advent of Islam. Mastery was for the powerful and slavery, for the weak. The powerful and the influential had their laws different from the weak and the meek. Not too far is an extension of that approach in our own time where some of our so-called civilized countries had separate laws for the black and the white. But, across this bridge of history, came the blessed benefactor of humanity, the Arab Prophet, may the blessings of Allah be upon him, and peace, who alone erased these distinctions. It was he who first declared equality of rights for the progeny of Adam and taught human beings their essential lesson in humanity.

Before the coming of the Holy Prophet ﷺ to Madīnah, there lived on the outskirts of Madīnah two tribes of Jews, Banū Qurayzah and Banū Nadīr. Out of the two, Banū Nadīr were more powerful and wealthy than Banū Qurayzah who constantly suffered at their hands and could do nothing about it. Matters reached to the point when Banū Nadīr forced Banū Qurayzah to agree to a disgraceful pact whereby if a man from Banū Nadīr were to kill a man from Banū

Qurayzah, they would not have the right to take his life in Qiṣāṣ (retaliation). Instead, stipulated the pact, they will receive only seventy *Wasaq* of dates as his blood money (*Wasaq*, Arab measure of weight approximately equivalent to 195.30 kg). As for the case being the reverse of it, if a man from Banū Qurayzah were to kill a man from Banū Nadīr, the law will be that the killer will be killed and, on top of it, blood money will be taken, and that too, twice as much as compared to what Banū Nadīr were entitled to, that is, one hundred and forty *Wasaq* of dates. Attached along with these were more conditions such as, if a woman from Banū Nadīr were to be killed, a man from Banū Qurayzah will be killed in retaliation; and if the person killed were to be a man, two men from Banū Qurayzah will be killed in retaliation; and if a slave from Banū Nadīr has been killed, a free man from Banū Qurayzah will be killed in retaliation; and if one hand of a man from Banū Nadīr has been cut by someone, two hands of a man from Banū Qurayzah will be cut; if one ear has been cut, two ears of their man will be cut. This was 'law' before Islam as it prevailed between these two tribes and Banū Qurayzah being weak had no choice but to go along with it.

When the Holy Prophet ﷺ migrated to Madinah, it became Dār al-Islām, a homeland of Muslims. These two tribes had not embraced Islam upto that time nor were they bound to follow Islamic law under any treaty obligation. But, they were observing the justice and common good brought in by Islamic law from a distance. During this period, it so happened that a man from Banū Qurayzah killed a certain man from Banū Nadīr. According to the pact mentioned above, Banū Nadīr demanded the doubled blood money (*Diyat*) from Banū Qurayzah. As said earlier, Banū Qurayzah were neither a part of the Muslim community nor did they have any existing pact with the Holy Prophet ﷺ. But, they were Jews who had among them many learned people as well. They knew on the strength of the prophecies of the Torah that the Holy Prophet ﷺ is the promised Last Prophet the glad tiding of which was given by the Torah. But, they had not declared their faith in him because of religious prejudice or temporal greed. Since they were watching that the Last Prophet's religion is a standard bearer of human equality and justice, they used it as a crutch to get rid of the tyranny of Banū Nadīr. They refused to

pay the doubled blood money on the plea that they belonged to the same family, same country, and same religion, that is, Judaism, and that they were not going to tolerate the unjust treatment meted out to them because of their weakness against tyranny right upto that day.

This reply enraged Banū Nadīr to the point of an imminent war. But, later, on the advice of some elders, it was decided that this matter should be taken to the Holy Prophet ﷺ for his decision. Banū Qurayzah could not have it any better. They already knew that the Holy Prophet ﷺ was not going to allow the injustice of Banū Nadīr to continue. As for Banū Nadīr, though they did agree to mutual conciliation talks under a situation of duress, but they also backed it up with a conspiracy when they sent a group of people to the Holy Prophet ﷺ before their case was to be presented in his court. These people were really their co-religionists, that is, they were Jews but kept in touch with the Holy Prophet ﷺ by hypocritically assuring him of their Islam. Their objective was to somehow find out the view of the Holy Prophet ﷺ before he hears and decides the case. So, the mandate and instruction given to these people was that they should accept what he said subject to the condition that it was in favour of their demand, and in the eventuality that his judgement turned out to be contrary to this, they were told not to make any commitments about its acceptance.

This event describing the cause of the revelation of these verses has been reported in detail by al-Baghawī while the Musnad of Aḥmad and Abū Dāwūd have reported its summary from Sayyidnā ‘Abdullāh ibn ‘Abbās - رضي الله عنه - (Mazharī).

Similar to this, there is another event, that of Zinā (fornication). Reporting its details, al-Baghawī says that it took place among the Jews of Khaybar. According to the punishment prescribed by the Torah, the couple involved had to be stoned to death. But, both of them belonged to some influential family. The Jews, acting in accordance with their old habit, looked for a softening of the punishment for them knowing that the religion of Islam gives leaves and concessions liberally. Based on this, they assumed that Islam would reduce this punishment as well. So, the people of Khaybar sent a message to their clansmen of Banū Qurayzah asking them to have this case settled by

Muhammad ﷺ and along with it, they sent the two accused as well. Their motivation behind this action was no different as they too instructed their clansmen to accept the verdict of the Holy Prophet ﷺ if the punishment awarded by him turned out to be light, but they were to reject it if the case was otherwise. At first, Banū Qurayzah were reluctant about the proposal. They did not know how the case will be decided by him and once they were there, they would have to accept the verdict. But, after further consultations, they decided that some of their chiefs should take the accused couple to the Holy Prophet ﷺ and request him to decide the case.

So, a deputation of Ka'b ibn Ashraf and others accompanied by the accused couple came to the Holy Prophet ﷺ. They asked: 'If a married man and a married woman are involved in adultery, what punishment do they get?' He said, 'Will you accept my verdict?' They said that they would. At that moment, Sayyidna Jibra'il appeared with a command from Almighty Allah which announced that their punishment was stoning to death. When these people heard this verdict, they were taken aback. They refused to accept it.

Sayyidna Jibra'il advised the Holy Prophet ﷺ that he should ask these people to appoint Ibn Sūryā as the arbitrator before deciding whether to accept or not to accept the verdict. Then, he told him about Ibn Sūryā and his identity. He asked the members of the deputation if they knew the youngman who is white but blind in one eye. He lived in Fidak and His name was Ibn Sūryā. Everyone confirmed that they did. He asked, 'What do you think about him?' They said, 'Of the learned people among Jews, there is no scholar greater than him on this earth.' He said, 'Call him in.'

So, he came. The Holy Prophet ﷺ asked him on oath, 'What is the injunction of the Torah in this case?' He said, 'By the Being in whose name you have put me on oath, if you had not put me on oath in that manner, and I did not have the apprehension that a false statement on my part would make the Torah burn me, then, I would have not revealed the reality. The reality is that the Torah too, like the injunction in Islam, does carry the command that both of them should be killed by stoning (*Rajm*).'

The Holy Prophet ﷺ said, 'What has come upon you now that you act against the injunction of the Torah?' Ibn Sūryā replied, 'The fact of the matter is that, religiously and legally, this is the punishment of adultery with us. But, since a prince of ours got involved in this crime, we showed leniency to him and let him go. We did not stone him to death. Later, the same crime was committed by an ordinary man. People responsible decided to stone him to death. The supporters of the criminal protested demanding that the Jewish Legal Punishment decided for this man should be given to the prince first, otherwise, they threatened, they would resist and block the execution of the punishment against him. When things dragged on, they sat together and compromised on just one light punishment for all, leaving the injunction of the Torah aside. So, we came up with a punishment which required some beating and the taking out of a procession with the culprits having their faces blackened with soot (a symbol of disgrace). This, then, became the usual custom with everyone.'

Commentary

We now know the details of the background in which the present three verses (41-43), and others which will follow, were revealed. Their gist is that the Jews were habitually used to issuing religious edicts as desired by the people, either for the benefit of relatives or to satisfy their greed for money, property, influence, and recognition. This had become a common custom particularly in matters involving punishments that they would, if the crime was committed by an influential person, change the severe punishment of the Torah into an ordinary one. It is this behaviour pattern of theirs which has been described in the first verse (41) in the following words: (يُخْرِفُونَ الْكَلْمَ مِنْ بَعْدِ مَوَاضِعِهِ) (They displace the words after their having been placed properly).

When the Holy Prophet ﷺ took up residence in Madīnah, these people started noticing changes. The Islamic Rule of Law was working as a unique system. It was simple, open and full of conveniences. Then, it had a reasonable set-up to eradicate crimes through appropriate punishments. Now the people who were used to making the severe punishments of the Torah easy for their clients by changing them saw an opportunity for themselves whereby they could take such shady matters to the Holy Prophet ﷺ and make him their

judge or arbitrator. The dual advantage they saw in it was that they would reap the benefits of all easy and light rules of Islamic Law while, at the same time, they would not have to commit the crime of altering the Torah. But, here too, they had their crookedness at work as they would hold on to their decision of taking their case to him until such time that they succeeded in finding out beforehand through some source or ruse as to the actual verdict which would be delivered in their case when presented. Then, if they found this verdict matching their wishes, they would make him their arbitrator and have him decide their case. If it happened to be contrary to their wishes, they would leave it at that. Since the events of this nature had caused pain to the Holy Prophet ﷺ, he has been comforted in the opening sentence of the verse that he should not grieve about their behaviour because it would finally turn out to be good for him.

Then, Allah Almighty let him know that these people were not making him a judge in their case sincerely. Their intentions were mischievous. Then, in the later verse (42), he was given the choice to either decide or avoid their case as he wished. He was also assured that they will not be able to harm him in any way, if he wished to avoid them. This is what the verse: (فَاحْكُمْ بَيْنَهُمْ أَوْ اْغْرِضْ عَنْهُمْ) (judge between them or turn away from them) means. Then, in the part of the verse which follows immediately, it was stated that should he elect to decide their case, the guideline given is that the decision has to be just. In other words, it meant that he was to decide the case in accordance with his Shari'ah because, after the coming of the Holy Prophet ﷺ, all former religious codes and their laws stand abrogated, except those which have been retained in the Holy Qur'an and the Shari'ah of the Last Prophet. It is for this reason that the act of deciding a case on the basis of another law, custom or usage contrary to the Divine Law has been declared to be injustice, sin and disbelief in later verses.

Judicial Process for Non-Muslims in an Islamic State

At this point, it should be borne in mind that these Jews who sent their cases to the court of the Holy Prophet ﷺ did not believe in him or his Shari'ah nor were they Dhimmis (non-Muslim citizens) protected by Muslims. However, they did have a no-war pact with the Holy Prophet ﷺ. This is why he was given the option to ei-

ther turn away from them, or give a decision in their case according to his Shari'ah because no responsibility for them falls on the Islamic state. If they were Dhimmīs (protected non-Muslim citizens of a Muslim State) and approached the Islamic government, the responsible Muslim official would have been duty-bound to give a verdict in their case. Avoiding it would have not been permissible because watching over their rights and removing injustice done to them is the duty of an Islamic government. Therefore, in a verse which will appear a little later (49), it has also been said: ﴿وَإِنْ أَخْرُجُوكُمْ بِمَا أَنْزَلَ اللَّهُ بِرَبِّكُمْ لَا تَحْكُمُ عَلَيْهِمْ مِمْنَ﴾ (And judge between them by what Allah has sent down and do not follow their desires ...) In other words, it means: If these people bring their case to you, decide it in accordance with your Shari'ah.

No choice has been given in this verse. Instead, the command is to decide as prescribed. In Ahkām al-Qur'ān, Imām Abū Bakr al-Jassās has accommodated the sense of both these verses by suggesting that the first verse where a choice has been given relates to non-Muslims who are not citizens or Dhimmīs of the Islamic state but continue to live where they are under a pact, such as, the position of the tribes of Banū Qurayzah and Banū Nadir. They had nothing to do with the Islamic state except that they were bound by a no-war pact. And the second verse concerns particular non-Muslims for whom Muslims are responsible and who are citizens of the Islamic state and owe allegiance to its legal government.

Worth pondering here is that in both these verses - the first verse which gives a choice and the second which gives a specified command - the instruction given to the Holy Prophet ﷺ is that he should decide cases of these non-Muslims, whenever he does so, in accordance with the injunctions revealed by Almighty Allah, that is, in accordance with his Shari'ah - and not in accordance with the wishes of these non-Muslims or the religion they follow.

To explain, it can be said that this injunction is related to events which have been described under the background of the revelation of these verses. Of these, one concerned the punishment for killing and blood money while the other was that of adultery and its punishment. In such punishments of crimes, the universal practice is to have a common law for the whole country. In this common law, no discrimination

is made on the basis of classes or religions, for example, amputating the hand of the thief which would not apply to Muslims alone, but would be the punishment for every citizen of the country. Similarly, the punishments for killing and adultery will also be common to everyone. But, it does not make it necessary that personal and purely religious matters of non-Muslims should also be decided in accordance with the Islamic Shari'ah.

Take an example from the conduct of the Holy Prophet ﷺ himself. Though he did declare liquor and swine unlawful for Muslims and prescribed a punishment for it, but he left non-Muslims free of any obligations in this matter. In addition to that, he never interfered in the personal law of non-Muslims pertaining to marriages and similar other matters. In fact, he accepted their marriages as valid.

With the rise of Islam in the Arabian Peninsula, the Magians of Hajar and the Jews and Christians of Najrān and Wādī al-Qurā became Dhimmīs (protected non-Muslim citizens) of the Islamic state. That the Magians believed in marriage with even a mother and sister as lawful was known to the Holy Prophet ﷺ. Similarly, marriage without 'Iddah (waiting period), or witnesses, was valid among Jews and Christians. But, he did not interfere in their personal matters and took their marriages as valid.

In short, it can be said that decisions about personal law and religious matters of non-Muslims who are citizens of a Muslim state shall be left to their own religion and thinking - and should there be the need to arrive at a judicial settlement of their cases, a judge from their own religion will be appointed to decide them.

However, in the event that they turn to a Muslim judge or ruler and show that the concerned parties would agree with the decision given, then, the Muslim judge or ruler will deliver his judgement but in accordance with his Shari'ah - because he is now the legally appointed arbitrator as approved by the parties concerned. In the noble verse: كَانُوا (Judge between them by what Allah has sent down and do not follow their desires - 49) appearing a little later, the command to decide in accordance with the Islamic Shari'ah given to the Holy Prophet ﷺ is based either on the matter being that of common law from which no section can be exempted, or rests on the basis

that such people have themselves come to the Holy Prophet ﷺ, have taken him as the arbitrator and wish that he himself should decide their case. Thus, it becomes obvious that his decision should be the one he believes in and which is also the mandate of his Shari'ah.

Now as we move on to other aspects of verse 41, we see that it begins with words of comfort for the Holy Prophet ﷺ, after which, he has been informed of the conspiracy hatched by the Jews, the description of which goes right upto its end. It reveals that the deputation coming to him was comprised of hypocrites who were secretly in league with the Jews and it is at their behest that they were going to see him. After that, there is a description of some evil traits of character the visiting group has against which Muslims have been warned. As an adjunct, it has been pointed out that these traits of character are rejectionist in nature, therefore, effort should be made to stay safe from them. Listed below are these four evil traits of character.

1. The first trait identified is: سُمْعَةٌ لِكُلِّ بَيْنَ يَدَيْهِ (They are listeners of the lie). It means that they are used to listening to and going by what is false. They are the kind of blind followers of unfaithful Jews who see to it that they are called men of learning who would go on following them despite noticing that they were openly negating the injunctions of the Torah, worse still, they would continue being satisfied with their fictional interpretations of it.

Following 'Ulamā': The Norm for People

The way those making alterations and adulterations in the injunctions of Allah and His Messengers have been warned here, indicted similarly are those too who take such people as their leaders in religion and get used to listening to false and fabricated presentations from them. Offered here is an important rule of guidance for Muslims that, though the only way of following the obligations of religion open to unlettered masses is to act in accordance with the ruling (*Fatwā*) and teaching (*Ta'līm*) of 'Ulamā' (traditionally trained, morally groomed, professionally equipped men and women of learning and living and teaching in accordance with the inviolable truth of the Qur'an and Sunnah - a sense not carried by stray equivalents of scholars, the learned, religious leaders, divines, priests, et al. Tr.). But, this is a re-

sponsibility from which the masses too cannot escape. It is their duty to first find out what they are doing. Before they take a *Fatwā* or hope to act correctly in a religious matter, they must at least investigate into the antecedents of those they are going to follow. This is like a sick person looking for a good physician. He consults people who know about the best in the field, about their education, expertise, practice, professionalism, moral quality and human dealing. After this possible assessment, if one makes a mistake and falls into the trap of a quack or charlatan, a reasonable person would not blame him. But, anyone who did not take the trouble of investigating and landed into the lair of a false practitioner and messed up his life, then, he alone will be responsible for his suicide.

The same principle applies to the dissemination of knowledge about religious matters for common people. If one of them first did what was necessary, talked to people of knowledge, expertise and experience available in his area and was able to pick up an 'Ālim to consult and follow, and acted according to his *Fatwā*, then, he would be considered excusable not only in the sight of people but also in the sight of Allah. In a *hadīth* relating to a similar matter, the Holy Prophet ﷺ is reported to have said: ﴿إِنَّمَا عَلَى مَنْ أَفْتَى﴾ which means, if in a situation like that, should the 'Ālim or Muftī make a mistake, and a Muslim acts in accordance with this incorrect *Fatwā*, then, the sin for having acted in that manner does not fall on him, but it does on that 'Ālim or Muftī - and that too would apply in a situation when that 'Ālim or Muftī had made such a mistake knowingly, or had fallen short in deliberating on the problem to the best of his ability, or, may be, he was no 'Ālim or Muftī to begin with, and had taken that responsible office through fraud or favour.

But, if a person takes someone as an 'Ālim (a source of correct religious guidance which is worth following) on his own, without investigating, and does what he says - and the 'Ālim so chosen is really not deserving of being followed - then, its curse will fall not only on that Muftī or 'Ālim alone, but this person who chose him will also share its consequences equally because he gave the reins of his '*Imān* (faith) into the hands of such a person without any investigation. These are the kind of people the Holy Qur'an calls 'the listeners of the lie,' people who keep tagged behind their (ill-chosen) religious leaders without

taking the trouble of finding out the truth about their knowledge and integrity, conduct and deeds, trustworthiness and honesty. Unfortunately, they have got themselves into the habit of listening, accepting and being satisfied with fabricated and false narratives from them.

The Holy Qur'an is talking about the condition of Jews here but the message behind it is actually beamed at Muslims so that they can stay safe against something like that. Unfortunately, this is one of the reasons of the downfall of Muslims in the contemporary world. They are quite smart in their mundane matters. When sick, they find the best physician. When stuck with a case, they will search out the best lawyer. When they make a house, they can dig out the top architect and engineer. But, when it comes to the matter of religion, they become so careless that they would take any man with a beard, a long shirt and a glib tongue as their religious leader, 'Ālim, Muftī or guide. They would do that without bothering to find out whether or not this person was educated and trained formally in a reliable institution of higher religious learning; whether or not he has sat at the feet of experts in the field and culled the taste and temperament of the knowledge of *Dīn*; whether or not he has made intellectual contributions during his career; whether or not he has benefited from the company of truly pious elders and Men of Allah by imbibing from them the essential virtues of Taqwā (fear of Allah) and Taharah (physical and spiritual purity)?

The result of this carefree attitude is that a large section of people from among Muslims who do turn to religion unfortunately falls into the fishing nets of ignorant preachers and commercial *pīrs* and becomes far-removed from the correct path of religion. For people like that, their knowledge of religion stands reduced to tales which leave their desiring selves untouched and which, then, gives them the delusion that they are following religion and doing a lot of worship. But, its reality is what has been described in the Holy Qur'an in the following words:

الَّذِينَ صَلَّى سَعْيُهُمْ فِي الْخَيْلَةِ الدُّنْيَا وَهُمْ يَخْسِبُونَ أَنَّهُمْ يُحْسِنُونَ صُنْعًا

They are the people whose efforts and deeds have gone waste within the life of the world while they are thin'king that they have done something good.

Concluding with a summary, we can say that the Holy Qur'an identifies an important principle by describing the hypocrites from among the Jews as 'the listeners of the lie.' The principle is that following 'Ulama is inevitable for people at large, but it is their responsibility that they should not follow anyone as their 'Ālim or guide in religion without prior investigation as a result of which they may not become habituated to listening to what is false from ignorant people.

2. Describing the other evil trait of these hypocrites, it was said: سَمْعُونَ لِقَوْمٍ أَخْرَجْنَاهُمْ كَمْ يَأْتُوكُمْ (listeners for other people who did not come to you). It means that these people have obviously come to ask you about a religious matter. But, the truth of the matter is that their objective is neither religion nor some ruling about it. In fact, they are the spies of the kind of Jewish people who did not come to you by themselves because of their arrogance. The deputationists, following the wishes of their senders, simply want to find out your view of the punishment of adultery and let their senders know about it who will themselves decide whether or not they would accept the verdict. In this, there is warning for Muslims that whoever seeks a Fatwā from an 'Ālim of *Dīn* is bound by the condition that the intention of the seeker must be to find out the command of Allah and His Messenger and to follow it. Any effort to find out from one Muftī, or more than one, the objective solution of a religious problem, then, going about looking for a solution which suits one's desires is an open demonstration of following one's own desiring self - and Shaytān. This should be avoided.

3. Describing the third evil trait of these people, it has been said that they 'displace the words (of Allah) after their having been placed properly,' which means that, by doing so, they give the Word of Allah a meaning which is not intended and thus try to alter Divine injunctions. Included here is the possibility of making some changes or alterations in the very words of the Torah, as well as the eventuality that they keep the words as they are but make interpretations and alterations which are absurd in meaning. The Jews are used to doing it both ways.

In this, the warning given to Muslims is that Allah Almighty has Himself taken the responsibility of protecting the Holy Qur'an. As for an alteration in its words, nobody can dare to do that because it is sim-

ply not a matter of what is written in the already countless copies of the Qur'ān, but also that of what lies secured in the memory banks of millions of human beings. Anyone who makes the slightest mistake of mispronouncing even a short vowel is caught instantly. As for an alteration in meaning, it can obviously be done - and doers have done it too. But, for its security, Almighty Allah has made the arrangement that there shall remain in this Ummah right through the Last Day of Qiyāmah, a group of people who would be armed with the correct meaning and message of the Qur'ān and Sunnah, and they would be enough to unmask the alterers, corrupters and distorters of their meanings.

Bribery and its evil consequences

4. The second verse (42) mentions another evil trait of these people by calling them: أَكْلُونَ لِسُحْطٍ translated here as 'eaters of the unlawful' making 'the unlawful' to stand for the word, 'suḥt' in the text. The literal meaning of Suḥt is to uproot or destroy something totally which is the sense in what the Qur'ān says in: فَيُشْرِكُمْ بِعَذَابٍ, that is, (do not forge lies against Allah) lest He destroy you with a punishment - 20:61). But, at this place in the Qur'ān, Suḥt denotes bribe. Sayyidnā 'Alī, رضي الله عنه Ibrāhīm Nakha'ī, Hasan al-Baṣrī, Mujaḥid, Qatādah and Dāhhāk and other leading authorities in Tafsīr have explained it as bribe.

The reason for equating bribe with Suḥt (total destruction; also - unlawful earning, detestable enough to be shunned) is that it not only destroys its givers and takers alike but also goes on to uproot the whole country and community and destroy public peace and tranquility (by causing rise in illegal gratification and fall in avenues of honest earning). When bribery gains currency in a country or a department, law freezes and bribery stays hot. As for the law of a country, it is the only power which maintains peace and stability. When law and order stand suspended, nothing remains safe, life or property or honour, nothing. Therefore, by calling it Suḥt, the Sharī'ah has declared it to be gravely Ḥarām, forbidden and unlawful. Moreover, to block all possible doors of bribery, even the gifts given to officials or leaders or dignitaries of a country have also been classed as Suht or bribe in an authentic *Hadīth*, and has been declared to be Ḥarām. (Jaṣṣāṣ)

The Holy Prophet ﷺ has said in a *hadīth*: Almighty Allah

causes His curse to fall on the giver and taker of bribe - and on him too who acts as a broker between them. (Jassāṣ).

The Islamic Legal definition of *Rishwah* (meaning bribery) is the taking of compensation for something the taking of which would not be legally correct. For example, a person doing a job, the doing of which is included within his duty, and the fulfilling of which is mandatory on him, cannot take any compensation for it from any party. If taken, that is bribe. Functionaries of governments, officials or clerks, higher or lower, are all obligated to do their duties by virtue of being paid employees of the government. If they take something from the person whose case they are handling, that will be a bribe. The father and mother of a girl are responsible for the marriage of their daughter. They cannot take any 'compensation' for doing that. If they take any 'compensation' from the person who will have the hands of their daughter in marriage, that is a bribe. *Sawm* (fasting), *Salāh* (prayers), *Hajj* (pilgrimage) and the *Tilāwah* (recitation) of the Qur'an are 'Ibādah' (acts of worship) with which Muslims have been obligated. The taking of any 'compensation' from anyone is a bribe. However, the duty of the Teaching of Qur'an and the duty of leading *Salāh* as *Imām* are exempt from this (as ruled by later Muslim jurists).

Then, a person who takes bribe **and** does someone's job as it should rightfully be done, he commits the sin of taking bribe and the money or material he has 'earned' is '*suht*', and unlawful for him. And should he do it as it should have not been done rightfully, then, this becomes another grave crime, that of wastage of what was right and that of changing an express command of Allah, in addition to the initial one. May Allah keep all Muslims safe from this curse.

Verses 44 - 50

إِنَّا أَنزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ
أَسْلَمُوا لِلَّذِينَ هَادُوا وَالرَّبَّنِيُّونَ وَالْأَحْبَارُ إِمَّا اسْتُحْفِظُوا مِنْ
كِتَابِ اللَّهِ وَكَانُوا عَلَيْهِ شُهَدًا فَلَا تَخْشُو النَّاسَ وَاحْشُوْنُ
وَلَا تَشْتَرُوا بِمَا يَتِي فِي ثَمَنًا قَلِيلًا طَوْمَنْ لَمْ يَحْكُمْ بِهَا أَنْزَلَ اللَّهُ